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Issued April 10, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY-Circular No. 21, Seventh Revision.

(Including two acts [Public—No. 301, H. R. 11877, and Public—No. 419, H. R. 22526] to amend section 8 of the food and drugs act and Regulations 3, 5, 17 and 19, 28, and 34 as amended by F. I. D. 79, 130, 84, 112, and 93, issued October 16, 1907, February 6, 1911, February 10, 1908, January 27, 1910, and May 23, 1908, respectively; also Regulation 9, section b, as amended by F. I. D. 99, December 8, 1908, to take effect January 1, 1909, and Regulation 15 as amended to accord with F. I. D. 104, 135, 138 and 142.)

RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE FOOD AND DRUGS ACT.

INTRODUCTION.

Under date of October 17, 1906, forty rules and regulations for the enforcement of the food and drugs act, June 30, 1906, were adopted by the three Secretaries. Since that date eight regulations, Nos. 3, 5, 9, 15, 17, 19, 28, and 34, have been amended, the first named by F. I. D. 79, "Collection of Samples," approved by Secretary Wilson of the Department of Agriculture, Secretary Cortelyou of the Treasury Department, and Secretary Straus of the Department of Commerce and Labor, No. 5 by F. I. D. 130, "Amendment to Regulation 5, Hearings," No. 9 by F. I. D. 99, "Change in Form of Guaranty Legend," No. 15 to accord with F. I. D. 104 on Benzoate of Soda and Nos. 135, 138, and 142 on Saccharin, Nos. 17 and 19 by F. I. D. 84, "Label" and "Character of Name," No. 28 by F. I. D. 112, on "Labeling of Derivatives," and No. 34 by F. I. D. 93, "Denaturing," all over the signatures of the Secretaries of Agriculture, the Treasury, and Commerce and Labor, with the exception of F. I. D. 142, from which the Secretary of the Treasury dissented.

Regulation 2, Original Unbroken Package, has been interpreted by F. I. D. 86, and Regulation 9, Form of Guaranty, by F. I. D. 83, the latter an opinion rendered by the

Attorney General on the issue of a guaranty based upon a guaranty.

In accordance with Regulation 15, Wholesomeness of Colors and Preservatives, F: I. D. 76, on Dyes, Chemicals, and Preservatives in Foods, F. I. D. 89, Relating to the Use in Foods of Benzoate of Soda and Sulphur Dioxid, F. I. D. 92, on the Use of Copper Salts, and F. I. D. 102, amending F. I. D. 92, have been issued over the signatures of the three Secretaries, constituting decisions on these points pending the completion of investigations and the issuance of final regulations governing the use of such substances. F. I. D. 104 constitutes the final decision on the use of benzoate of soda in foods, and allows such use; F. I. D. 135, 138, and 142 constitute the final decision on the use of saccharin in food and prohibit such use after April 1, 1912.

With the exception of these amendments and amplifications the regulations as originally issued remain unchanged, and no additional rules have been adopted, the revision issued under this date incorporating the changes enumerated, together with the amendments to section 8 of the food and drugs act.

D. F. HOUSTON, Secretary of Agriculture.

Washington, D. C., March 21, 1913. 84024°—Cir. 21—13——1

RULES AND REGULATIONS AS AMENDED.

GENERAL.

Regulation 1. Short Title of the Act.

The act, "For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, shall be known and referred to as "The Food and Drugs Act, June 30, 1906."

Regulation 2. Original Unbroken Package.

[See also F. I. D. 86 for interpretation of this regulation.]

(Section 2.)

The term "original unbroken package" as used in this act is the original package, carton, case, can, box, barrel, bottle, phial, or other receptacle put up by the manufacturer, to which the label is attached, or which may be suitable for the attachment of a label, making one complete package of the food or drug article. The original package contemplated includes both the wholesale and the retail package.

Regulation 3. Collection of Samples.

[As amended by F. I. D. 79, October 8, 1907, to take effect November 1, 1907.]

(Section 4.)

Samples of unbroken packages shall be collected only by authorized agents of the Department of Agriculture, or by the health, food, or drug officer of any State, Territory, or the District of Columbia, when commissioned by the Secretary of Agriculture for this purpose.

Samples may be purchased in the open market, and, if in bulk, the marks, brands, or tags upon the package, carton, container, wrapper, or accompanying printed or written matter shall be noted. The collector shall also note the names of the vendor and agent through whom the sale was actually made, together with the date of the purchase. The collectors shall purchase representative samples.

A sample taken from bulk goods shall be divided into three parts,

and each shall be labeled with the identifying marks.

If a package be less than 4 pounds, or in volume less than 2 quarts, three packages shall be purchased, when practicable, and the marks and tags upon each noted as above. When three samples are purchased, one sample shall be delivered to the Bureau of Chemistry or to such chemist or examiner as may be designated by the Secretary of Agriculture; the second and third samples shall be held under seal by the Secretary of Agriculture, who, upon request, shall deliver one of such samples to the party from whom purchased or to the party guaranteeing such merchandise.

When it is impracticable to collect three samples, or to divide the sample or samples, the order of delivery outlined above shall obtain, and in case there is a second sample the Secretary of Agriculture may, at his discretion, deliver such sample to parties interested.

All samples shall be sealed by the collector with a seal provided

for the purpose.

Regulation 4. Methods of Analysis.

(Section 4.)

Unless otherwise directed by the Secretary of Agriculture, the methods of analysis employed shall be those prescribed by the Association of Official Agricultural Chemists and the United States Pharmacopæia.

Regulation 5. Hearings.

[As amended by F. I. D. 130, January 18, 1911.]

(Section 4.)

(a) When the examination or analysis shows that samples are adulterated or misbranded within the meaning of this act notice of that fact shall be given in every case to the party or parties against whom prosecution lies under this act for the shipment or manufacture or sale of the particular product and such other interested parties as the Secretary of Agriculture may direct, and a date shall be fixed at which such party or parties may be heard before the Secretary of Agriculture or such other person as he may direct. The hearings shall be had at places designated by the Secretary of Agriculture most convenient for all parties concerned. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorney and may submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. Interested parties may present proper interrogatories to analysts, to be submitted to and propounded by the Secretary of Agriculture or the officer conducting the hearing. Such privilege, however, shall not include the right of cross-examina-The Secretary/of Agriculture may order a reexamination of the sample or have new samples drawn for further examination.

(b) If, after hearings held, it appears that a violation of the act has been committed, the Secretary of Agriculture shall give notice to the

proper United States attorney.

(c) Any health, food, or drug officer or agent of any State, Territory, or the District of Columbia who shall obtain satisfactory evidence of any violation of the Food and Drugs Act, June 30, 1906, as provided by section 5 thereof, shall first submit the same to the Secretary of Agriculture in order that he may give notice and fix dates for hearings to the proper parties.

Regulation 6. Publication.

(Section 4.)

(a) When a judgment of the court shall have been rendered there may be a publication of the findings of the examiner or analyst, together with the findings of the court.

(b) This publication may be made in the form of circulars, notices, or bulletins, as the Secretary of Agriculture may direct, not less than

thirty days after judgment.

(c) If an appeal be taken from the judgment of the court before such publication, notice of the appeal shall accompany the publication.

Regulation 7. Standards for Drugs.

(Section 7.)

- (a) A drug bearing a name recognized in the United States Pharmacopæia or National Formulary, without any further statement respecting its character, shall be required to conform in strength, quality, and purity to the standards prescribed or indicated for a drug of the same name recognized in the United States Pharmacopæia or National Formulary, official at the time.
- (b) A drug bearing a name recognized in the United States Pharma-copæia or National Formulary, and branded to show a different standard of strength, quality, or purity, shall not be regarded as adulterated if it conforms to its declared standard.

Regulation 8. Formulas—Proprietary Foods.

(Section 8, last paragraph.)

- (a) Manufacturers of proprietary foods are only required to state upon the label the names and percentages of the materials used, in so far as the Secretary of Agriculture may find this to be necessary to secure freedom from adulteration and misbranding.
- (b) The factories in which proprietary foods are made shall be open at all reasonable times to the inspection provided for in Regulation 16.

Regulation 9. Form of Guaranty.

[As amended December 8, 1908, by F. I. D. 99, to take effect on January 1, 1909; see also F. I. D. 83 for opinion of the Attorney-General on the issue of a guaranty based upon a former guaranty.]

(Section 9.)

- (a) No dealer in food or drug products will be liable to prosecution if he can establish that the goods were sold under a guaranty by the wholesaler, manufacturer, jobber, dealer, or other party residing in the United States from whom purchased.
- (b) A general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number,

which number shall appear on each and every package of goods sold under such guaranty with the words "Guaranteed by [insert name of guarantor] under the food and drugs act, June 30, 1906."

(c) The following form of guaranty is suggested:

I (we) the undersigned do hereby guarantee that the articles of foods or drugs manufactured, packed, distributed, or sold by me (us) [specifying the same as fully as possible] are not adulterated or misbranded within the meaning of the food and drugs act, June 30, 1906.

(Signed in ink.)

[Name and place of business of wholesaler, dealer, manufacturer, jobber, or other party.]

(d) If the guaranty be not filed with the Secretary of Agriculture as above, it should identify and be attached to the bill of sale, invoice, bill of lading, or other schedule giving the names and quantities of the articles sold.

ADULTERATION.

Regulation 10. Confectionery.

(Section 7.)

- (a) Mineral substances of all kinds (except as provided in Regulation 15) are specifically forbidden in confectionery whether they be poisonous or not.
 - (b) Only harmless colors or flavors shall be added to confectionery.
- (c) The term "narcotic drugs" includes all the drugs mentioned in section 8, food and drugs act, June 30, 1906, relating to foods, their derivatives and preparations, and all other drugs of a narcotic nature.

Regulation 11. Substances Mixed and Packed with Foods.

(Section 7, under "Foods.")

No substance may be mixed or packed with a food product which will reduce or lower its quality or strength. Not excluded under this provision are substances properly used in the preparation of food products for clarification or refining, and eliminated in the further process of manufacture.

Regulation 12. Coloring, Powdering, Coating, and Staining.

(Section 7, under "Foods.")

- (a) Only harmless colors may be used in food products.
- (b) The reduction of a substance to a powder to conceal inferiority in character is prohibited.
- (c) The term "powdered" means the application of any powdered substance to the exterior portion of articles of food, or the reduction of a substance to a powder.
- (d) The term "coated" means the application of any substance to the exterior portion of a food product.

(e) The term "stain" includes any change produced by the addition of any substance to the exterior portion of foods which in any way alters their natural tint.

Regulation 13. Natural Poisonous or Deleterious Ingredients.

(Section 7, paragraph 5, under "Foods.")

Any food product which contains naturally a poisonous or deleterious ingredient does not come within the provisions of the food and drugs act, June 30, 1906, except when the presence of such ingredient is due to filth, putrescence, or decomposition.

Regulation 14. External Application of Preservatives.

(Section 7, paragraph 5, under "Foods," proviso.)

- (a) Poisonous or deleterious preservatives shall only be applied externally, and they and the food products shall be of a character which shall not permit the permeation of any of the preservative to the interior, or any portion of the interior, of the product.
- (b) When these products are ready for consumption, if any portion of the added preservative shall have penetrated the food product, then the proviso of section 7, paragraph 5, under "Foods," shall not obtain, and such food products shall then be subject to the regulations for food products in general.
- (c) The preservative applied must be of such a character that, until removed, the food products are inedible.

Regulation 15. Wholesomeness of Colors and Preservatives.

[As amended to accord with F. I. D. 104. See also F. I. D. 76, 89, 92, 101, 102, 135, and 138 for rulings under this head.]

(Section 7, paragraph 5, under "Foods.")

- (a) Respecting the wholesomeness of colors, preservatives, and other substances which are added to foods, the Secretary of Agriculture thall determine from chemical or other examination, under the authority of the agricultural appropriation act, Public 382, approved June 30, 1906, the names of those substances which are permitted or inhibited in food products; and such findings, when approved by the Secretary of the Treasury and the Secretary of Commerce and Labor, shall become a part of these regulations.
- (b) The Secretary of Agriculture shall determine from time to time, in accordance with the authority conferred by the agricultural appropriation act, Public 382, approved June 30, 1906, the principles which shall guide the use of colors, preservatives, and other substances added to foods; and when concurred in by the Secretary of the Treasury and the Secretary of Commerce and Labor, the principles so established shall become a part of these regulations.

(c) It having been determined that benzoate of soda mixed with food is not deleterious or poisonous and is not injurious to health, no objection will be raised under the food and drugs act to the use in food of benzoate of soda, provided that each container or package of such food is plainly labeled to show the presence and amount of benzoate of soda. Food Inspection Decisions 76 and 89 are amended accordingly.

(d) It having been determined that saccharin mixed with food is an added poisonous and deleterious ingredient such as is contemplated by the act, and also that the substitution of saccharin for sugar in foods reduces and lowers their quality, the Secretary of Agriculture will regard as adulterated under the food and drugs act foods containing saccharin which, on or after April 1, 1912, are manufactured or offered for sale in the District of Columbia or Territories or shipped in interstate or foreign commerce, or offered for importation into the United States. (F. I. D. 135, 138, and 142, dated April 26 and June 20, 1911, and March 1, 1912, respectively.)

Regulation 16. Character of the Raw Materials.

(Section 7, paragraph 1, under "Drugs;" paragraph 6, under "Foods.")

(a) The Secretary of Agriculture, when he deems it necessary, shall examine the raw materials used in the manufacture of food and drug products, and determine whether any filthy, decomposed, or putrid substance is used in their preparation.

(b) The Secretary of Agriculture shall make such inspections as

often as he may deem necessary.

MISBRANDING.

Regulation 17. Label.

[As amended by F. I. D. 84, January 31, 1908, taking effect February 10, 1908.]

(Section 8.)

- (a) The term "label" applies to any printed, pictorial or other matter upon or attached to any package of a food or drug product, or any container thereof subject to the provisions of this act.
- (b) The principal label shall consist, first, of all information which the food and drugs act, June 30, 1906, specifically requires, to wit, the name of the place of manufacture in the case of food compounds or mixtures sold under a distinctive name; statements which show that the articles are compounds, mixtures, or blends; the words "compound," "mixture," or "blend," and words designating substances or their derivatives and proportions required to be named in the case of foods and drugs. All this information shall appear upon the principal label, and should have no intervening descriptive or explanatory reading matter. Second, if the name of the manufacturer and place of

manufacture are given, they should also appear upon the principal label. Third, preferably upon the principal label, in conjunction with the name of the substance, such phrases as "artificially colored," "colored with sulphate of copper," or any other such descriptive phrases necessary to be announced should be conspicuously displayed. Fourth, elsewhere upon the principal label other matter may appear in the discretion of the manufacturer. If the contents are stated in terms of weight or measure, such statement should appear upon the principal label and must be couched in plain terms, as required by Regulation 29.

- (c) If the principal label is in a foreign language, all information required by law and such other information as indicated above in (b) shall appear upon it in English. Besides the principal label in the language of the country of production, there may be also one or more other labels, if desired, in other languages, but none of them more prominent than the principal label, and these other labels must bear the information required by law, but not necessarily in English. The size of the type used to declare the information required by the act shall not be smaller than 8-point (brevier) capitals: *Provided*, That in case the size of the package will not permit the use of 8-point type, the size of the type may be reduced proportionately.
- (d) Descriptive matter upon the label shall be free from any statement, design, or device regarding the article or the ingredients or substances contained therein, or quality thereof, or place of origin, which is false or misleading in any particular. The term "design" or "device" applies to pictorial matter of every description, and to abbreviations, characters, or signs for weights, measures, or names of substances.
- (e) An article containing more than one food product or active medicinal agent is misbranded if named after a single constituent.

In the case of drugs the nomenclature employed by the United States Pharmacopæia and the National Formulary shall obtain.

(f) The use of any false or misleading statement, design, or device appearing on any part of the label shall not be justified by any statement given as the opinion of an expert or other person, nor by any descriptive matter explaining the use of the false or misleading statement given as the opinion of an expert or other person, nor by any descriptive matter explaining the use of the false or misleading statement, design, or device.

Regulation 18. Name and Address of Manufacturer.

(Section 8.)

(a) The name of the manufacturer or producer, or the place where manufactured, except in case of mixtures and compounds having a distinctive name, need not be given upon the label, but if given, must be the true name and the true place. The words "packed for ———,"

- "distributed by ——," or some equivalent phrase, shall be added to the label in case the name which appears upon the label is not that of the actual manufacturer or producer, or the name of the place not the actual place of manufacture or production.
- (b) When a person, firm, or corporation actually manufactures or produces an article of food or drug in two or more places, the actual place of manufacture or production of each particular package need not be stated on the label except when in the opinion of the Secretary of Agriculture the mention of any such place, to the exclusion of the others, misleads the public.

Regulation 19. Character of Name.

[As amended by F. I. D. 84, January 31, 1908, taking effect February 10, 1908.]

(Section 8.)

- (a) A simple or unmixed food or drug product not bearing a distinctive name should be designated by its common name in the English language; or if a drug, by any name recognized in the United States Pharmacopæia or National Formulary. No further description of the components or qualities is required, except as to content of alcohol, morphine, etc.
- (b) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place, when such name indicates that the article was manufactured or produced in that place.
- (c) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.
- (d) A foreign name which is recognized as distinctive of a product of a foreign country shall not be used upon an article of domestic origin except as an indication of the type or style of quality or manufacture, and then only when so qualified that it can not be offered for sale under the name of a foreign article.

Regulation 20. Distinctive Name.

(Section 8.)

- (a) A "distinctive name" is a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound.
- (b) A distinctive name shall not be one representing any single constituent of a mixture or compound.

(c) A distinctive name shall not misrepresent any property or

quality of a mixture or compound.

(d) A distinctive name shall give no false indication of origin, character, or place of manufacture, nor lead the purchaser to suppose that it is any other food or drug product.

Regulation 21. Compounds, Imitations, or Blends Without Distinctive Name.

(Section 8.)

- (a) The term "blend" applies to a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only.
- (b) If any age is stated, it shall not be that of a single one of its constituents, but shall be the average of all constituents in their respective proportions.
- (c) Coloring and flavoring can not be used for increasing the weight or bulk of a blend.
- (d) In order that colors or flavors may not increase the volume or weight of a blend, they are not to be used in quantities exceeding 1 pound to 800 pounds of the blend.

(e) A color or flavor can not be employed to imitate any natural product or any other product of recognized name and quality.

(f) The term "imitation" applies to any mixture or compound which is a counterfeit or fraudulent simulation of any article of food or drug.

Regulation 22. Articles without a Label.

(Section 8, paragraph 1, under "Drugs;" paragraph 1, under "Foods.")

It is prohibited to sell or offer for sale a food or drug product bearing no label upon the package or no descriptive matter whatever connected with it, either by design, device, or otherwise, if said product be an imitation of or offered for sale under the name of another article.

Regulation 23. Proper Branding not a Complete Guaranty.

Packages which are correctly branded as to character of contents, place of manufacture, name of manufacturer, or otherwise, may be adulterated and hence not entitled to enter into interstate commerce.

Regulation 24. Incompleteness of Branding.

A compound shall be deemed misbranded if the label be incomplete as to the names of the required ingredients. A simple product does not require any further statement than the name or distinctive name thereof, except as provided in Regulations 19 (a) and 28.

Regulation 25. Substitution.

(Sections 7 and 8.)

- (a) When a substance of a recognized quality commonly used in the preparation of a food or drug product is replaced by another substance not injurious or deleterious to health, the name of the substituted substance shall appear upon the label.
- (b) When any substance which does not reduce, lower, or injuriously affect its quality or strength, is added to a food or drug product, other than that necessary to its manufacture or refining, the label shall bear a statement to that effect.

Regulation 26. Waste Materials.

(Section 8.)

When an article is made up of refuse materials, fragments, or trimmings, the use of the name of the substance from which they are derived, unless accompanied by a statement to that effect, shall be deemed a misbranding. Packages of such materials may be labeled "pieces," "stems," "trimmings," or with some similar appellation.

Regulation 27. Mixtures or Compounds with Distinctive Names.

(Section 8. First proviso under "Foods," paragraph 1.)

- (a) The terms "mixtures" and "compounds" are interchangeable and indicate the results of putting together two or more food products.
- (b) These mixtures or compounds shall not be imitations of other articles, whether simple, mixt, or compound, or offered for sale under the name of other articles. They shall bear a distinctive name and the name of the place where the mixture or compound has been manufactured or produced.
- (c) If the name of the place be one which is found in different States, Territories, or countries, the name of the State, Territory, or country, as well as the name of the place, must be stated.

Regulation 28. Substances named in Drugs or Foods.

[As amended by F. I. D. 112, January 6, 1910, taking effect April 1, 1910.] (Section 8. Second under "Drugs;" second under "Foods.")

- (a) The term "alcohol" is defined to mean common or ethyl alcohol. No other kind of alcohol is permissible in the manufacture of drugs except as specified in the United States Pharmacopæia or National Formulary.
- (b) The words alcohol, morphine, opium, etc., and the quantities and proportions thereof, shall be printed in letters corresponding in size with those prescribed in Regulation 17, paragraph (c).

- (c) A drug, or food product except in respect of alcohol, is misbranded in case it fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, heroin, cocaine, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.
- (d) A statement of the maximum quantity or proportion of any such substances present will meet the requirements, provided the maximum stated does not vary materially from the average quantity or proportion.

(e) In case the actual quantity or proportion is stated it shall be the average quantity or proportion with the variations noted in

Regulation 29.

(f) The following are the principal derivatives and preparations made from the articles which are required to be named upon the label:

Alcohol, Ethyl: (Cologne spirits, Grain alcohol, Rectified spirits, Spirits, and Spirits of wine.)

Derivatives—

Aldehyde, Ether, Ethyl acetate, Ethyl nitrite, and Paraldehyde.

Preparations containing alcohol—

Bitters, Brandies, Cordials, Elixirs, Essences, Fluidextracts, Spirits, Sirups, Tinctures, Tonics, Whiskies, and Wines.

MORPHINE, ALKALOID:

Derivatives—

Apomorphine, Dionine, Peronine, Morphine acetate, Hydrochloride, Sulphate, and other salts of morphine.

Preparations containing morphine or derivatives of morphine—

Bougies, Catarrh Snuff, Chlorodyne, Compound powder of morphine, Crayons, Elixirs, Granules, Pills, Solutions, Sirups, Suppositories, Tablets, Triturates, and Troches.

OPIUM, GUM:

Preparations of opium—

Extracts, Denarcotized opium, Granulated opium, and Powdered opium, Bougies, Brown mixture, Carminative mixtures, Crayons, Dover's powder, Elixirs, Liniments, Ointments, Paregoric, Pills, Plasters, Sirups, Suppositories, Tablets, Tinctures, Troches, Vinegars, and Wines.

Derivatives—

Codeine, Alkaloid, Hydrochloride, Phosphate, Sulphate, and other salts of codeine.

Preparations containing codeine or its salts—

Elixirs, Pills, Sirups, and Tablets.

COCAINE, ALKALOID:

Derivatives—

Cocaine hydrochleride, Oleate, and other salts.

Preparations containing cocaine or salts of cocaine—

Coca leaves, Catarrh powders, Elixirs, Extracts, Infusion of coca, Ointments, Paste pencils, Pills, Solutions, Sirups, Tablets, Tinctures, Troches, and Wines.

HEROIN:

Preparations containing heroin—Sirups, Elixirs, Pills, and Tablets.

ALPHA AND BETA EUCAINE:

Preparations-

Mixtures, Ointments, Powders, and Solutions.

CHLOROFORM:

Preparations containing chloroform—

Chloranodyne, Elixirs, Emulsions, Liniments, Mixtures, Spirits, and Sirups.

CANNABIS INDICA:

Preparations of cannabis indica—

Corn remedies, Extracts, Mixtures, Pills, Powders, Tablets, and Tinctures.

CHLORAL HYDRATE (Chloral, U. S. Pharmacopœia, 1890):

Derivatives-

Chloral acetophenonoxim, Chloral alcoholate, Chloralamide, Chloralimide, Chloral orthoform, Chloralose, Dormiol, Hypnal, and Uraline.

Preparations containing chloral hydrate or its derivatives—

Chloral camphorate, Elixirs, Liniments, Mixtures, Ointments, Suppositories, Sirups, and Tablets.

Acetanilide (Antifebrine, Phenylacetamide):

Derivatives-

Acetphenetidine, Citrophen, Diacetanilide, Lactophenin, Methoxy-acetanilide, Methylacetanilide, Para-Iodoacetanilide, and Phenacetine.

Preparations containing acetanilide or derivatives—

Analgesics, Antineuralgics, Antirheumatics, Cachets, Capsules, Cold remedies, Elixirs, Granular effervescing salts, Headache powders, Mixtures, Pain remedies, Pills, and Tablets.

(g) In declaring the quantity or proportion of any of the specified substances the names by which they are designated in the act shall be used, and in declaring the quantity or proportion of derivatives of any of the specified substances, in addition to the trade name of the derivative, the name of the specified substance shall also be stated, so as to indicate clearly that the product is a derivative of the particular specified substance.

Regulation 29. Statement of Weight or Measure.

(Section 8. Third under "Foods.")

[The section of the law under which this regulation was made has been amended by the act of March 3, 1913, Public—No. 419, H. R. 22526. New regulations will be published as soon as they have been adopted.]

- (a) A statement of the weight or measure of the food contained in a package is not required. If any such statement is printed, it shall be a plain and correct statement of the average net weight or volume, either on or immediately above or below the principal label, and of the size of letters specified in Regulation 17.
- (b) A reasonable variation from the stated weight for individual packages is permissible, provided this variation is as often above as below the weight or volume stated. This variation shall be determined by the inspector from the changes in the humidity of the atmosphere, from the exposure of the package to evaporation or to absorption of water, and the reasonable variations which attend the filling and weighing or measuring of a package.

Regulation 30. Method of Stating Quantity or Proportion.

(Section 8.)

In the case of alcohol the expression "quantity" or "proportion" shall mean the average percentage by volume in the finished product. In the case of the other ingredients required to be named upon the label, the expression "quantity" or "proportion" shall mean grains or minims per ounce or fluid ounce, and also, if desired, the metric equivalents therefor, or milligrams per gram or per cubic centimeter, or grams or cubic centimeters per kilogram or per liter; provided that these articles shall not be deemed misbranded if the maximum of quantity or proportion be stated, as required in Regulation 28 (d).

EXPORTS AND IMPORTS OF FOODS AND DRUGS.

Regulation 31. Preparation of Food Products for Export.

(Section 2.)

- (a) Food products intended for export may contain added substances not permitted in foods intended for interstate commerce, when the addition of such substances does not conflict with the laws of the countries to which the food products are to be exported and when such substances are added in accordance with the directions of the foreign purchaser or his agent.
- (b) The exporter is not required to furnish evidence that goods have been prepared or packed in compliance with the laws of the foreign country to which said goods are intended to be shipped, but such shipment is made at his own risk.
- (c) Food products for export under this regulation shall be kept separate and labeled to indicate that they are for export.
- (d) If the products are not exported they shall not be allowed to enter interstate commerce.

Regulation 32. Imported Food and Drug Products.

(Section 11.)

- (a) Meat and meat food products imported into the United States shall be accompanied by a certificate of official inspection of a character to satisfy the Secretary of Agriculture that they are not dangerous to health, and each package of such articles shall bear a label which shall identify it as covered by the certificate, which certificate shall accompany or be attached to the invoice on which entry is made.
- (b) The certificate shall set forth the official position of the inspector and the character of the inspection.
- (c) Meat and meat food products as well as all other food and drug products of a kind forbidden entry into or forbidden to be sold, or

restricted in sale in the country in which made or from which exported, will be refused admission.

(d) Meat and meat food products which have been inspected and passed through the customs may, if identity is retained, be transported in interstate commerce.

Regulation 33. Declaration.

(Section 11.)

(a) All invoices of food or drug products shipped to the United States shall have attached to them a declaration of the shipper, made before a United States consular officer, as follows:

I, the undersigned, do solemnly and truly declare that I am the ———————————————————————————————————
the merchandise herein mentioned and described, and that it consists of food or drug
products which contain no added substances injurious to health.
These products were grown in —— and manufactured in —— by —— (Country.) (Name of manufacturer.) and are exported from —— and consigned to —— (City.)
of manufacturer.) (City.)
The products bear no false labels or marks, contain no added coloring matter or
preservative —————, and are not of a character to cause prohibition or restriction (Name of added color or preservative.)
in the country where made or from which exported.
Dated at —— this —— day of ——, 19 —.
(Signed): ————.

(b) In the case of importations to be entered at New York, Boston, Philadelphia, Chicago, San Francisco, and New Orleans, and other ports where food and drug inspection laboratories shall be established, this declaration shall be attached to the invoice on which entry is made. In other cases the declaration shall be attached to the copy of the invoice sent to the Bureau of Chemistry.

Regulation 34. Denaturing.

[As amended by F. I. D. 93, May 12, 1908.]

(Section 11.)

Unless otherwise declared on the invoice, all substances ordinarily used as food products will be treated as such. Shipments of substances ordinarily used as food products intended for technical purposes should be accompanied by a declaration stating that fact. Such products should be denatured before entry, but denaturing may be allowed under customs supervision with the consent of the Secretary of the Treasury, or the Secretary of the Treasury may release such products without denaturing, under such conditions as may preclude the possibility of their use as food products.

Regulation 35. Bond, Imported Foods, and Drugs.

(Section 11.)

Unexamined packages of food and drug products may be delivered to the consignee prior to the completion of the examination to determine whether the same are adulterated or misbranded upon the execution of a penal bond by the consignee in the sum of the invoice value of such goods with the duty added, for the return of the goods to customs custody.

Regulation 36. Notification of Violation of the Law.

(Section 11.)

If the sample on analysis or examination be found not to comply with the law, the importer shall be notified of the nature of the violation, the time and place at which final action will be taken upon the question of the exclusion of the shipment, and that he may be present, and submit evidence (Form No. 5), which evidence, with a sample of the article, shall be forwarded to the Bureau of Chemistry at Washington, accompanied by the appropriate report card.

Regulation 37. Appeal to the Secretary of Agriculture and Remuneration.

(Section 11.)

All applications for relief from decisions arising under the execution of the law should be addrest to the Secretary of Agriculture, and all vouchers or accounts for remuneration for samples shall be filed with the chief of the inspection laboratory, who shall forward the same, with his recommendation, to the Department of Agriculture for action.

Regulation 38. Shipment beyond the jurisdiction of the United States.

(Section 11.)

The time allowed the importer for representations regarding the shipment may be extended at his request to permit him to secure such evidence as he desires, provided that this extension of time does not entail any expense to the Department of Agriculture. If at the expiration of this time, in view of the data secured in inspecting the sample and such evidence as may have been submitted by the manufacturers or importers, it apppears that the shipment can not be legally imported into the United States, the Secretary of Agriculture shall request the Secretary of the Treasury to refuse to deliver the shipment in question to the consignee, and to require its reshipment beyond the jurisdiction of the United States.

Regulation 39. Application of Regulations.

These regulations shall not apply to domestic meat and meat food products which are prepared, transported, or sold in interstate or foreign commerce under the meat-inspection law and the regulations of the Secretary of Agriculture made thereunder.

Regulation 40. Alteration and Amendment of Regulations.

These regulations may be altered or amended at any time, without previous notice, with the concurrence of the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor.

THE FOOD AND DRUGS ACT, JUNE 30, 1906, AS AMENDED AUGUST 23, 1912.

AN ACT For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any article of food or drug which is adulterated or misbranded, within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeaner, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: Provided, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory,

or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

SEC. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

SEC. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

SEC. 6. That the term "drug" as used in this Act, shall include all medicines and preparations recognized in the United States Pharmacopæia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

SEC. 7. That for the purposes of this Act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopæia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopæia or National Formulary official at the time of investigation: *Provided*, That no drug defined in the United States Pharmacopæia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopæia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded: In case of drugs:

First. If it be an imitation of or offered for sale under the name of another article. Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

Third. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third.¹ If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: *Provided*, *however*, That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section three of this Act.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That

¹ The act of March 3, 1913, provides that no penalty of fine, imprisonment, or confiscation shall be enforced for any violation of its provisions as to decessive products prepared or foreign products imported prior to eighteen months after its passage.

an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

SEC. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of this Act.

Sec. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: Provided, however, That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

SEC. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such sam-

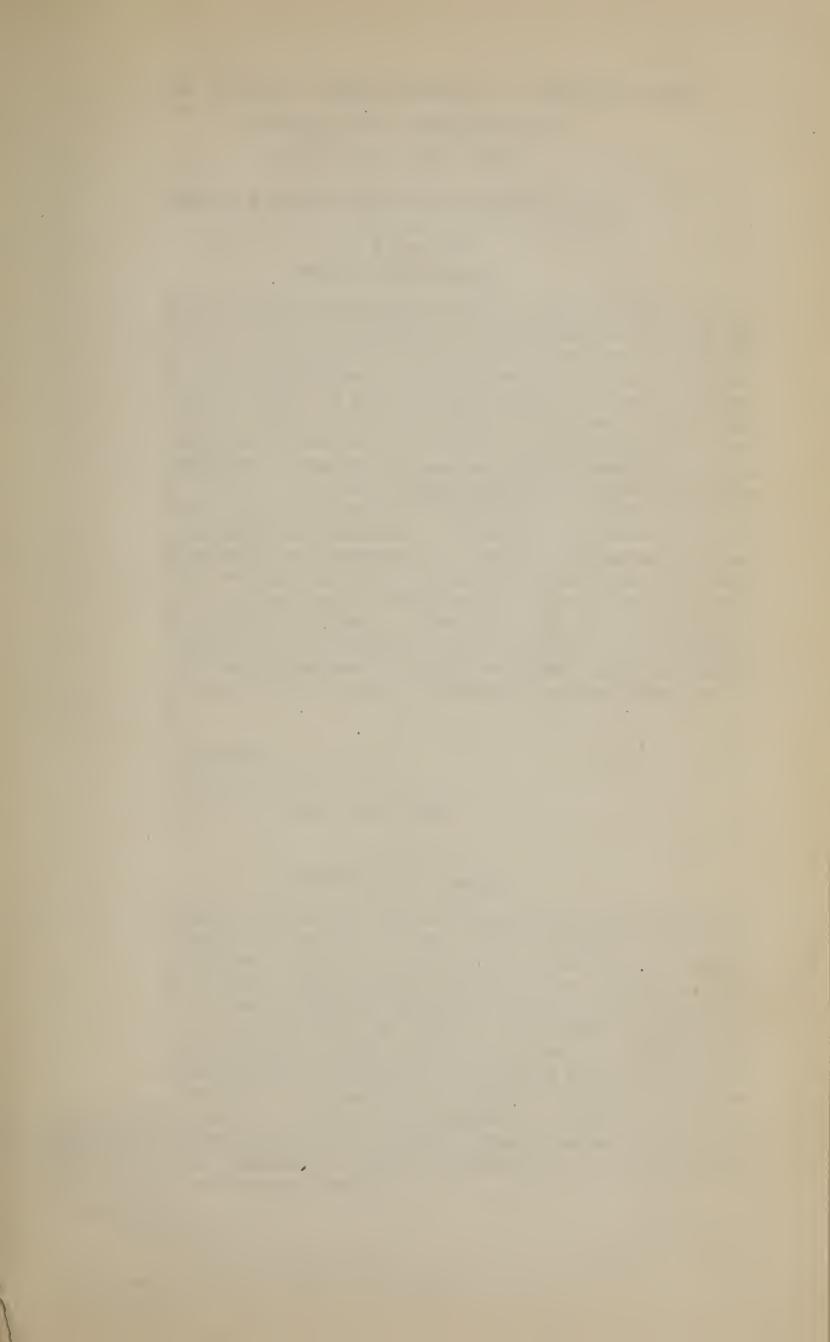
ples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: Provided, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: And provided further, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

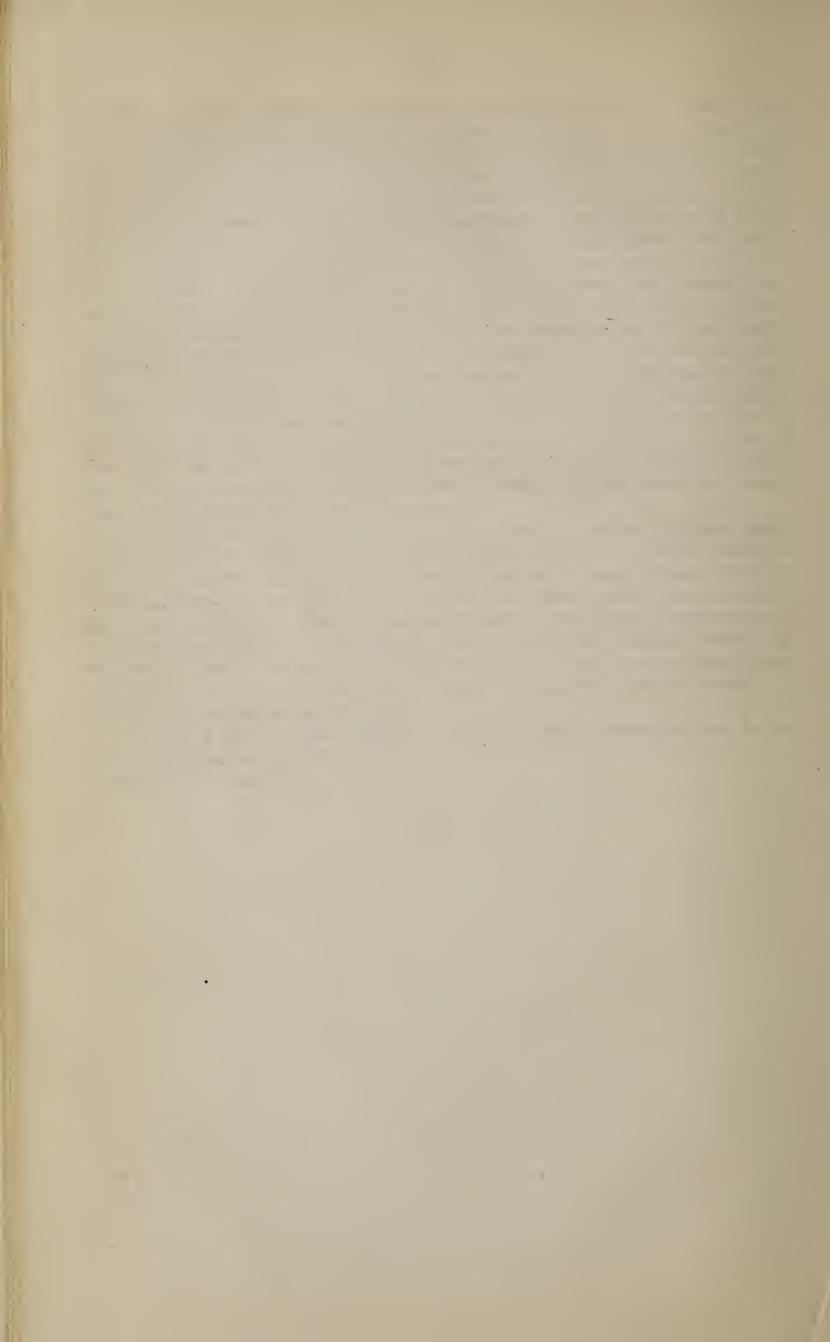
SEC. 12. That the term "Territory" as used in this Act shall include the insular possessions of the United States. The word "person" as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

SEC. 13. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and seven.

Approved June 30, 1906.

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United States Department of Agriculture, Bureau of Chemistry,

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 40-43.

(F. I. D. 40) FILING GUARANTY.

In order that both the Department and the manufacturer may be protected against fraud it is requested that all guaranties of a general character filed with the Secretary of Agriculture in harmony with Regulation 9, Rules and Regulations for the Enforcement of the Food and Drugs Act, June 30, 1906, be acknowledged before a notary or other official authorized to affix a seal. Attention is called to the fact that when a general guaranty has been thus filed every package of articles of food and drugs put up under the guaranty should bear the legend, "Guaranteed under the Food and Drugs Act, June 30, 1906," and also the serial number assigned thereto, if the dealer is to receive the protection contemplated by the guaranty. No other word should go upon this legend or accompany it in any way. Particular attention is called to the fact that nothing should be placed upon the label, or in any printed matter accompanying it, indicating that the guaranty is made by the Department of Agriculture. The appearance of the serial number with the phrase above mentioned upon a label does not exempt it from inspection nor its guarantor from prosecution in case the article in question be found in any way to violate the food and drugs act of June 30, 1906.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., October 25, 1906.

(F. I. D. 41.)

APPROVAL OF LABELS.

Numerous requests are referred to this Department for the approval of labels to be used in connection with articles of food and drugs under the food and drugs act of June 30, 1906. This act does not authorize the Secretary of Agriculture nor any agent of the Department to approve labels. The Department therefore will not give its approval to any label. Any printed matter upon the label implying that this Department has approved it will be without warrant. It is believed that with the law and the regulations before him the manufacturer will have no difficulty in arranging his label in harmony with the requirements set forth. If there be questions on which there is doubt respecting the general character of labels, decisions under the food and drugs act will be rendered, of a public character and published from time to time, covering such points.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., October 25, 1906.

26985-10

(F. I. D. 42.)

MIXING FLOURS.

The following communication has been received respecting the mixing of flours of different cereals:

In conformity with the custom of a century or more, the manufacturers of rye flour, in order to produce a lighter and more easily worked flour, have added a proportion of wheat flour to their rye and branded it "Rye Flour."

This custom simply conforms to the consumers' demand for a whiter loaf and

from every standpoint is a perfectly legitimate operation.
Under the interpretation of the food and drugs act of June 30, 1906, apparent restrictions are placed upon this compounding, and I would therefore respectfully ask your ruling upon the following points:

1. Under this interpretation will it be necessary to add the word "compound"

2. Will it be necessary in accordance with this interpretation to name in the brand the fact that a wheat admixture has been made, in addition to the use of the word "compound," providing that word is necessary?

3. Referring to paragraph f, Regulation 17, which reads as follows:

"An article containing more than one food product or active medicinal agent is misbranded if named after a single constituent," will it be permissible to still name the rye-wheat admixture "rye-flour?"

The food and drugs act of June 30, 1906, and the rules and regulations made thereunder, provide for the proper marking of food prod-

ucts and penalties for misbranding.

The act also provides that a food product is not misbranded "in the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the

package in which it is offered for sale."

Keeping in view these provisions of the law, and rules and regulations made thereunder, it appears that the mixing of rye flour and wheat flour is not prohibited by the law provided the package is marked "compound" or "mixture," the word standing alone and without qualification, and also if the label contain the information which shows that it is properly branded. The mixture may also be denominated a "blend" if rye flour and wheat flour be regarded as like substances. It is held that this information in the case mentioned would be a statement of the ingredients used in making the compound. It is further held that the use of an ingredient in small quantity simply for the purpose of naming it in the list of ingredients would be contrary to the intent of the law, and therefore that the ingredients must be used in quantities which would justify the appearance of their names upon the The statement made of the constituents used should be of a character to indicate plainly that the article is a compound, mixture,

It is evident from the above explanation that the naming of a mixture of this kind "rye flour" would be plainly a violation of the law

and the regulations made thereunder.

Attention is called also to the act of Congress approved June 13, 1898, U. S. Revised Statutes, sections 36 to 49, inclusive, imposing special taxes under the supervision of the Commissioner of Internal Revenue on mixed flour.

Approved:

W. M. Hays, Acting Secretary.

Washington, D. C., October 30, 1906.

(F. I. D. 43.)

RELABELING OF GOODS ON HAND.

The following is a type of numerous communications received concerning the operation of the food law:

The retail grocers of our city, as well as some of the jobbers, are very much concerned over stocks of canned goods and other similar goods they might have in stock on January 1, 1907, when the new pure-food act goes into effect.

We are under the impression that where there is nothing deleterious to health

contained in such goods so held it is not the Department's intention to interfere in

any way, shape, or form with them.

Where these goods are held by retailers in our own city does this come within the jurisdiction of the National law, or is it controlled only by State laws?

Similar letters have been received relating to drugs, medicines, and other articles affected by the operation of the law. A general answer is deemed advisable, which, it is hoped, will cover the cases in question.

Section (i) of Regulation 17 provides that—

The regulation regarding the principal label will not be enforced until October 1, 1907, in the case of labels printed and now on hand, whenever any statement therein contained which is contrary to the food and drugs act, June 30, 1906, as to character of contents, shall be corrected by a supplemental label, stamp, or paster. All other labels now printed and on hand may be used without change until October 1, 1907.

It is held that under this regulation labels which contain statements relating to the name of manufacturer, the place of manufacture, etc., which are not in harmony with the general meaning of the law may be used if on hand on the 1st of January, 1907, the day on which the regulations become effective. Any statement, however, respecting the character of the contents which is false or misleading should be cor-The correction should secure the obliteration of rected as indicated. the misstatement either by placing the supplemental label or paster over it or obliterating it in some other way. If the goods contain artificial color or preservative other than ordinary condimental substances (salt, sugar, vinegar, wood smoke, spices, and condiments of all kinds), that fact should appear upon the supplemental stamp or paster. any of the words required to be placed upon drugs and foods in the specific wording of the act do not appear upon the label, such as alcohol, opium, etc., it is held that the correction must include the enumeration of these substances, as provided for in Regulations 28 and 29.

If goods that are packed and sealed in a carton which contains the bottle or other package also sealed and labeled were not in the hands of the manufacturer after January 1, 1907, but had been already delivered to the jobber or dealer, it will be held sufficient to mark the external carton alone, provided the goods are sold only in the unbroken If the container, however, holds a large number of separate packages, it will be necessary that each of the separate packages to be sold as such shall be labeled with the words required specifically by

the act.

It must not be forgotten that Regulation 17, section (i), is for the purpose of avoiding the expense of relabeling articles already packed and branded at the time the regulations go into effect, and which necessarily could not have been so packed and branded with any intent to evade the provisions of the law, and it is expected that jobbers and dealers will do everything in their power to bring the packages now on hand into as close harmony with the provisions of the act and the regulations made thereunder as possible.

All articles in the hands of manufacturers, jobbers, and dealers on the 1st day of January, 1907, which are sold wholly within the State in which they are found on that date are exempt from the provisions of the act. Thus the use of the supplemental label, stamp, or paster is required only on those articles which on or after the 1st day of January, 1907, enter interstate commerce or are offered for sale in the District of Columbia and the Territories. It is believed that the provisions of Regulation 17, section (i), can be complied with without great annoyance and expense. It will be deemed sufficient if the supplemental pasters and labels are attached at the time the goods are shipped beyond the State line, that is, they need not necessarily be attached to such articles on the 1st day of January, but at any time thereafter when prepared for interstate commerce. Thus the labor of meeting this requirement will be distributed according to the exigencies of actual trade. On and after October 1, 1907, the labels must be originally properly printed, and no further amendment will be considered.

Approved:

W. M. Hays,

Acting Secretary.

Washington, D. C., November 6, 1906.

United States Department of Agriculture, BUREAU OF CHEMISTRY.

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 44 AND 45.

(F. I. D. 44.)

SCOPE AND PURPOSE OF FOOD INSPECTION DECISIONS.

From the tenor of many inquiries received in this Department it appears that many persons suppose that the answers to inquiries addressed to this Department, either in letters or in published decisions, have the force and effect of the rules and regulations for the enforcement of the food and drugs act of June 30, 1906. The following are illustrations of the inquiries received by this Department:

Must we stamp all goods as conforming to the drug; and food law, whether they have alcohol and narcotics therein, or not?

On a brand of salad oil, which is a winter-strain cotton-seed oil, can it be sold under the brand of salad oil, or must it state that it is cotton-seed oil?

It seems highly desirable that an erroneous opinion of this kind should be corrected. The opinions or decisions of this Department do not add anything to the rules and regulations nor take anything away from them. They therefore are not to be considered in the light of rules and regulations. On the other hand, the decisions and opinions referred to express the attitude of this Department in relation to the interpretation of the law and the rules and regulations, and they are published for the information of the officials of the Department who may be charged with the execution of the law and especially to acquaint manufacturers, jobbers, and dealers with the attitude of this Department in these matters. They are therefore issued more in an advisory than in a mandatory spirit. It is clear that if the manufacturers, jobbers, and dealers interpret the rules and regulations in the same manner as they are interpreted by this Department, and follow that interpretation in their business transactions, no prosecution will lie against them. needs no argument to show that the Secretary of Agriculture must himself come to a decision in every case before a prosecution can be initiated, since it is on his report that the district attorney is to begin a prosecution for the enforcement of the provisions of the act.

In so far as possible it is advisable that the opinions of this Department respecting the questions which arise may be published. It may

often occur that the opinion of this Department is not that of the manufacturer, jobber, or dealer. In this case there is no obligation resting upon the manufacturer, jobber, or dealer to follow the line of procedure marked out or indicated by the opinion of this Department. Each one is entitled to his own opinion and interpretation and to assume the responsibility of acting in harmony therewith.

It may be proper to add that in reaching opinions and decisions on these cases the Department keeps constantly in view the two great purposes of the food and drugs act, namely, to prevent misbranding and to prohibit adulteration. From the tenor of the correspondence received at this Department and from the oral hearings which have been held, it is evident that an overwhelming majority of the manufacturers, jobbers, and dealers of this country are determined to do their utmost to conform to the provisions of the act, to support it in every particular, and to accede to the opinions of this Department respecting its construction. It is hoped, therefore, that the publication of the opinions and decisions of the Department will lead to the avoidance of litigation which might arise due to decisions which may be reached by this Department indicating violations of the act, violations which would not have occurred had the opinions and decisions of the Department been brought to the attention of the offender.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., December 1, 1906.

(F. I. D. 45.)

BLENDED WHISKIES.

Many letters are received by the Department making inquiries concerning the proper method of labeling blended whisky. Manufacturers are anxious to know the construction placed by the Department upon this particular part of the food and drugs act of June 30, 1906, and to ascertain under what conditions the words "blended whisky" or "whiskies" may be used. The following quotation from one of these letters presents a particular case of a definite character:

On account of the uncertainty prevailing in our trade at the present time as to how to proceed under the pure-food law and regulations regarding what will be considered a blend of whiskies, I am taking the liberty of expressing to you to-day two samples of whisky made up as follows:

Sample A contains 51 per cent of Bourbon whisky and 49 per cent of neutral spirits. In this sample a small amount of burnt sugar is used for coloring, and a small amount of prune juice is used for flavoring, neither of which increases the volume to any great extent.

Sample B contains 51 per cent of neutral spirits and 49 per cent of Bourbon

whisky. Burnt sugar is used for coloring, and prune juice is used for flavoring, neither of which increases the volume to any great extent.

I have marked these packages "blended whiskies" and want your ruling as to whether it is proper to thus brand and label such goods.

My inquiry is for the purpose of guiding the large manufacturing interests in the trade that I represent.

In a subsequent letter from the same writer the following additional statement is made:

The reason for wanting your decision or ruling in this matter is just this: No house in the trade can afford to put out goods and run the risk of seizure and later litigation by the Government on account of the odium that would be attached to fighting the food and drugs act.

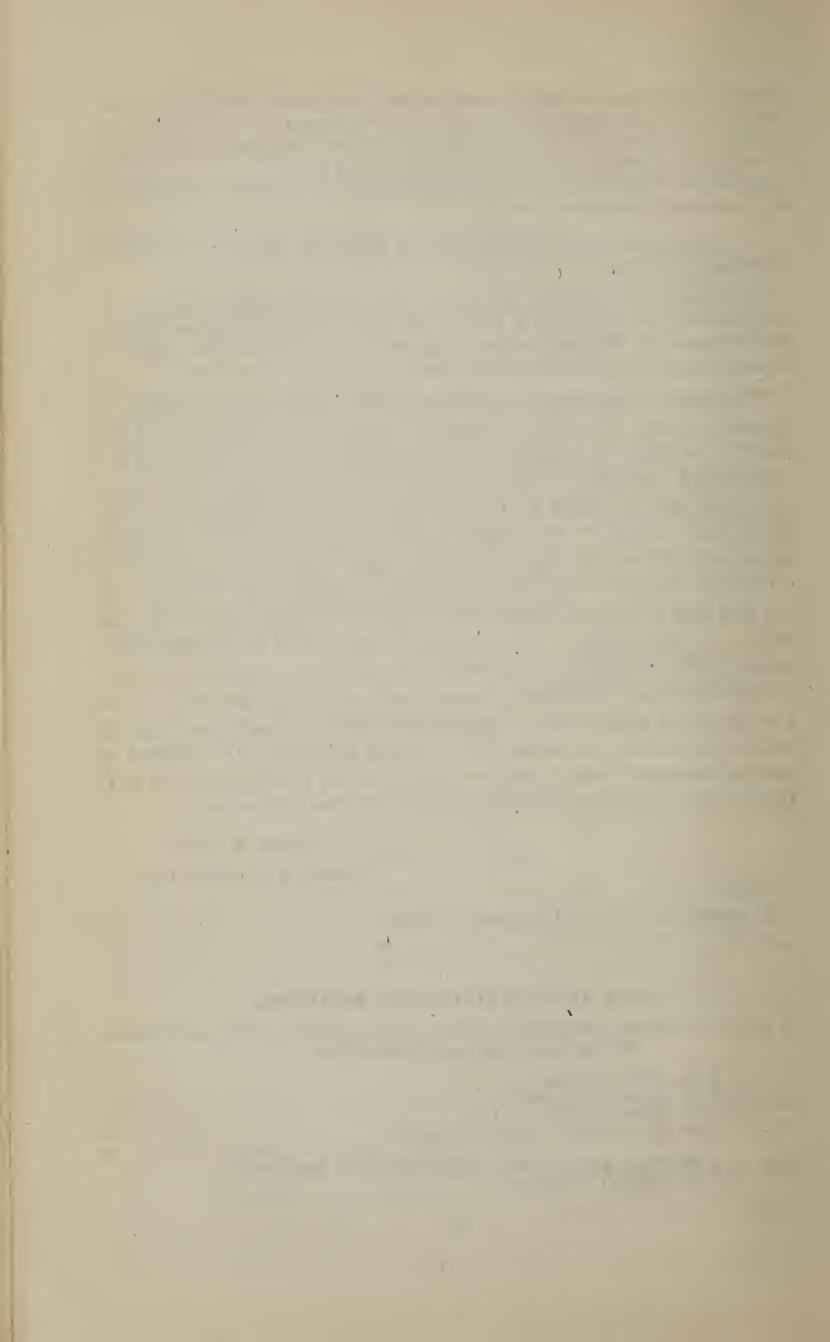
The question presented is whether neutral spirits may be added to Bourbon whisky in varying quantities, colored and flavored, and the resulting mixture be labeled "blended whiskies." To permit the use of the word "whiskies" in the described mixture is to admit that flavor and color can be added to neutral spirits and the resulting mixture be labeled "whisky." The Department is of opinion that the mixtures presented can not legally be labeled either "blended whiskies" or "blended whisky." The use of the plural of the word "whisky" in the first case is evidently improper for the reason that there is only one whisky in the mixture. If neutral spirit, also known as cologne spirit, silent spirit, or alcohol, be diluted with water to a proper proof for consumption and artificially colored and artificially flavored, it does not become a whisky, but a "spurious imitation" thereof, not entirely unlike that defined in section 3244, Revised Statutes. The mixture of such an imitation with a genuine article can not be regarded as a mixture of like substances within the letter and intent of the law.

> JAMES WILSON, Secretary of Agriculture.

Washington, D. C., December 1, 1906.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. $\begin{cases} 40. & \text{Filing Guaranty.} \\ 41. & \text{Approval of Labels.} \\ 42. & \text{Mixing Flours.} \\ 43. & \text{Relabeling of Goods on Hand.} \end{cases}$
- F. I. D. { 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.



United States Department of Agriculture. BUREAU OF CHEMISTRY,

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 46 (as amended), 47, 48.

46 (as amended). Fictitious Firm Names. 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.

(F. I. D. 46, as amended.)

(Superseding F. I. D. 46, December 13, 1906.)

FICTITIOUS FIRM NAMES.

F. I. D. 46, issued on December 13, 1906, on the subject of fictitious firm names, is hereby amended to read as follows, for the purpose of obviating any ambiguity that may have existed in the original decision. The amended portion is set in italics.

The following extract from a letter is typical of a question frequently asked:

In connection with our manufacture of flavoring extracts, we produce an article containing a certain percentage of artificial coumarin and vanillin. This product has been placed on the market under the name of —— and Company, a fictitious firm, although dealers have always understood that it was our product. Is there any objection to our continuing to brand the product as manufactured by —— and Company?

The same question has frequently been asked by importers who state that they desire to assume the responsibility for particular brands.

It has been held by the Attorney-General (F. I. D. 2) that—

Regulation 18 provides that if the name of the manufacturer and the place of manufacture be given; they must be the true name and the true place. It would appear, therefore, that the use of a fictitious name in such a manner that it would be understood to be the name of the manufacturer would be clearly a violation of Regulation 18. It is apparent that the provisions of Regulation 18 will not be fulfilled by the nominal incorporation of a fictitious firm. The regulations require that goods must be actually manufactured by the firm represented on the label as the manufacturer.

When a proper name, other than that of the manufacturer, is placed upon a label it must not be used in the possessive. For instance,

CHARLES GASTON'S
OLIVE OIL
BORDEAUX

can only be properly used on an oil manufactured by Charles Gaston at Bordeaux. The same is true if the designation

GASTON'S OLIVE OIL BORDEAUX

be employed.

On the other hand, the word "Gaston" might be used in an adjective sense, and not in the possessive case as qualifying the words "olive oil," in a manner that would indicate that it represented a brand and not a manufacturer, as

GASTON OLIVE OIL.

Or,

OLIVE OIL, GASTON BRAND.

In such case, however, neither given name nor initials should be employed. The word "Gaston" should be in the same type as "olive oil" and in equal prominence, thus forming a part of the label.

The phrase "Olive Oil, Charles Gaston Brand," may be used, in which case the name of the actual manufacturer should appear, in order that no false indication of the name of the person or firm manufacturing the product may be given.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., February 21, 1907.

(F. I. D. 47.)

FLAVORING EXTRACTS.

The percentage of alcohol is not required to be stated in the case of extracts sold for the preparation of foods only. It is held, however, that extracts which are sold or used for any medicinal purpose whatever should have the percentage of alcohol stated on the label.

Numerous inquiries are received regarding the proper designation of products made in imitation of flavoring extracts or in imitation of flavors. Such products include "Imitation vanilla flavor," which is made from such products as tonka extract, coumarin, and vanillin, with or without vanilla extract. They may also include numerous preparations made from synthetic fruit ethers intended to imitate strawberry, banana, pineapple, etc. Such products should not be so designated as to convey the impression that they have any relation to

the flavor prepared from the fruit. Even when it is not practicable to prepare the flavor directly from the fruit, "imitation" is a better term than "artificial."

These imitation products should not be designated by terms which indicate in any way by similarity of name that they are prepared from a natural fruit or from a standard flavor. The term "venallos," for instance, would not be a proper descriptive name for a preparation intended to imitate vanilla extract. Such products should either be designated by their true names, such as "vanilla and vanillin flavor," "vanillin and coumarin flavor," or by such terms as "imitation vanilla flavor" or "vanilla substitute."

Articles in the preparation of which such substitutes are employed should not be labeled as if they were prepared from standard flavors or from the fruits themselves. For instance, ice cream flavored with imitation strawberry flavor should not be designated as "strawberry ice cream." If sold as strawberry ice cream without a label the product would appear to be in violation of Regulation 22.

Artificial colors should be declared whenever present.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., December 13, 1906.

(F. I. D. 48.)

SUBSTANCES USED IN THE PREPARATION OF FOODS.

The following letter was recently received at the Department of Agriculture:

We import a preparation of gelatin preserved with sulphurous acid for the purpose of fining wine. This gelatin is not used as a food and does not remain in the wine, although a small amount of the sulphurous acid may be left in the wine. Please inform us if the sale of this product is a violation of the food law.

It is held that the products commonly added to foods in their preparation are properly classed as foods and come within the scope of the food and drugs act. The Department can not follow a food product into consumption in order to determine the use to which it is put. Pending a decision on the wholesomeness of sulphurous acid as provided in Regulation 15 (b), its presence should be declared.

James Wilson, Secretary of Agriculture.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. $\begin{cases} 40. & \text{Filing Guaranty.} \\ 41. & \text{Approval of Labels.} \\ 42. & \text{Mixing Flours.} \\ 43. & \text{Relabeling of Goods on Hand.} \end{cases}$
- F. I. D. \{\begin{aligned} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies. \end{aligned}

United States Department of Agriculture, Bureau of Chemistry.

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 49-53.

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906. 50. Imitation Coffee. 51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.

(F. I. D. 49.)

TIME REQUIRED TO REACH DECISIONS ON DIFFERENT PROBLEMS CONNECTED WITH THE FOOD AND DRUGS ACT, JUNE 30, 1906.

Many letters have reached the Department asking for action on very important questions connected with the food and drugs act which require much study and time to secure all the facts necessary to the rendering of a just decision. It is quite impossible to answer all such letters in detail. The following general statement shows the attitude of the Department on questions of this kind:

All manufacturers and dealers have copies of the law and regulations or can secure them and study them carefully. Each manufacturer and dealer should conduct his business as nearly as possible in harmony with the law as he interprets it. When each particular problem involved reaches a solution in this Department, it is hoped it will be found that the manufacturers and jobbers have come also to a similar decision in the matter. Public notice will be given of each decision as it is issued, that the manufacturers and dealers may be informed and be able at once to place themselves in line with the decisions of the Department. In this way it is hoped that all injustice will be avoided in the execution of the law and everyone be given an opportunity to put himself right and to have due notice of decisions which may be made.

The Department will use every endeavor to reach prompt decisions, but must take time to collect the facts and subject them to a proper study; otherwise the decisions would not have the value which should attach to them in important matters affecting the execution of the law.

James Wilson, Secretary of Agriculture.

Washington, D. C., January 8, 1907.

(F. I. D. 50.)

IMITATION COFFEE.

A manufacturer writes as follows:

We beg to ask for your opinion as regards the hyphenated word "Cereal-Coffee," and whether or not we are entitled to its use for a cereal substitute for coffee. * * * In our opinion the term "Cereal-Coffee" would come under the so-called trade name and distinctive name.

It is held that since the product mentioned is not a coffee it can not properly be called by the term mentioned. Regulation 20 (d) provides that a distinctive name shall give no false indication of character. The use of the name "cereal-coffee" might be taken to indicate that the product is coffee or has the properties of coffee, and hence the use of this term does not comply with the definition of distinctive name. Even if the product consist in part of coffee, the name would not be correct. It is suggested that products of this nature be designated as "imitation coffee," as provided in Regulation 21 (f). In such case the word "imitation" should be in uniform type, on uniform background, and should be given equal prominence with the word "coffee."

James Wilson, Secretary of Agriculture.

Washington, D. C., January 18, 1907.

(F. I. D. 51.)

COLORING OF BUTTER AND CHEESE.

Numerous inquiries, of which the following is an illustration, have been received by the Department:

Will you kindly inform me concerning the coloring of butter and cheese under the pure-food law? Would it be unlawful to color butter and cheese as now practiced?

The coloring of butter is specifically permitted in the law of August 2, 1886 (24 Stat., 209), and the coloring of cheese in the law of June 6, 1896 (29 Stat., 253). It is held by the Department that the food and drugs act does not repeal the provisions of the acts referred to above and the addition of harmless color to these substances may be practiced as therein provided, and that the presence of coloring matter specifically recognized by acts of Congress as a constituent is not required to be declared on the label.

James Wilson, Secretary of Agriculture.

Washington, D. C., January 18, 1907.

(F. I. D. 52.)

FORM OF LABEL.

The following is an extract from a letter recently received:

We do not understand the requirements of the regulations respecting the arrangement of labels; that is, the order in which the various features of the label should be arranged.

To meet the requests for the opinion of the Department regarding the proper arrangement of a label, the following order is suggested:

1. Name of substance or product.

- 2. In case of foods, words which indicate that the articles are compounds, mixtures, or blends, and the word "Imitation," "Compound," or "Blend," as the case may be.
- 3. Statements designating the quantity or proportion of the ingredients enumerated in the law, or derivatives and preparations of same, as mentioned under Regulation 28; also statements of other extraneous substances whose presence should be declared, such as harmless coloring matter, or any necessary statement regarding grade or quality.

(The statements specified in paragraphs 1, 2, and 3, should appear together without any intervening descriptive or explanatory matter.)

4. Name of manufacturer (if given).

5. Place of manufacture (if given, or when required in case of food mixtures or compounds bearing a distinctive name).

It is stated in Regulation 17 that if the name of the manufacturer and place of manufacture be given they should appear upon the principal label. Although the law does not require that the name of the manufacturer be given, or the place of manufacture, except in case of food mixtures and compounds having a distinctive name, it is held that if they are given they must be true, and should be placed with the required information on the principal label. The arrangement of the label is the same for both food and drug products and an example of each is given.

^aAttention is called to the fact that the declaration of alcohol and its derivatives is not required in foods.

Sample label for food product.

[Name of product.]

[Declaration required by paragraphs 2 and 3.]

[Name of manufacturer, if given.]
[Place of manufacture, if

given.]

KETCHUP.

ARTIFICIALLY COLORED.

[Descriptive matter, if desired, but preferably at bottom of label.]

BLANK & CO., PORTLAND, ME.

[Descriptive matter, if desired.]

Sample label for drug product.

[Name of product.]

[Declarations required by paragraphs 2 and 3.]

[Name of manufacturer, if given.]
[Place of manufacture, if given.]

COUGH SYRUP.

ALCOHOL, 10 PER CENT.
MORPHINE, ½ GRAIN PER
OUNCE.
CHLOROFORM, 40 MINIMS
PER OUNCE.

[Descriptive matter, if desired, but preferably at bottom of label.]

JOHN JONES & CO., WASHINGTON, D. C.

[Descriptive matter, if desired.]

Any descriptive or explanatory matter that may appear on the principal label, therefore, should be placed at the bottom of the label, or between No. 3 and No. 4, and should be clearly separated from other features of the label by means of a suitable line or space. Statements regarding the reason for using alcohol, artificial coloring matter, and other extraneous substances, come under the head of descriptive or explanatory matter, and should not be interpersed with the declarations required under Nos. 2 and 3.

The information called for under No. 3 should be so worded as to give only the required information, as, for example, "alcohol 17 per cent" or "artificially colored." All numbers used in expressing quantity or proportion of substances required to be stated (see Regulation 28) should be expressed in the Arabic notation.

Each substance required to be declared under No. 3 should be printed on a separate line and in type specified in Regulation 17 (c).

James Wilson, Secretary of Agriculture.

Washington, D. C., January 18, 1907.

(F. I. D. 53.)

FORMULA ON THE LABEL OF DRUGS.

Many inquiries are received relative to the necessity of giving the formula of medicinal remedies on the label. The following is typical:

I should like to know if it will be necessary for me to state on a label the name of the products from which I prepare my proprietary medicine in order to conform with the pure food and drugs act. If I do this, it will prohibit me from manufacturing and selling a remedy which is a secret of my own; and anyone buying it could, from the label, tell what ingredients were used in its preparation and make his own supply of this medicine. How does the United States Government expect to protect those who have secret medicinal preparations they wish to sell at a profit? If the Pure Food Commission desires, I will send them a sample bottle of my medicine for their inspection and approval.

The food and drugs act, June 30, 1906, does not require the formula of drug products to be given on the label, but requires only that the quantity or proportion of the ingredients enumerated in the law, and derivatives and preparations of same (Regulation 28), shall be clearly set forth on the label or labels of all preparations used for the treatment or prevention of disease, either internally or externally, for man or other animals. This includes sample packages as well as regular trade packages.

The question is also frequently asked whether a medicinal preparation would be exempt from the operation of the law if the formula were given on the label. The formula on the label is very desirable, but this information is not required by the law. The act forbids the use of any statement, design, or device in connection with any drug product which is false or misleading in any particular. A defect of this kind would not be corrected by giving the formula on the label. If the formula is given, it must be the correct and complete formula. It is held that, in addition to those substances required by the act to be named, if only a part of the active medicinal agents used in the manufacture of a drug product are set forth on the label, such a procedure is misleading and therefore forbidden by the law. All drug products and their labels must conform to the act, whether the formula is or is not given on the label.

James Wilson, Secretary of Agriculture.

Washington, D. C., January 28, 1907.

LIST OF FOOD INSPECTION DECISIONS.

F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.

(40. Filing Guaranty.

F. I. D. 41. Approval of Labels.
42. Mixing Flours.
43. Relabeling of Goods on Hand.

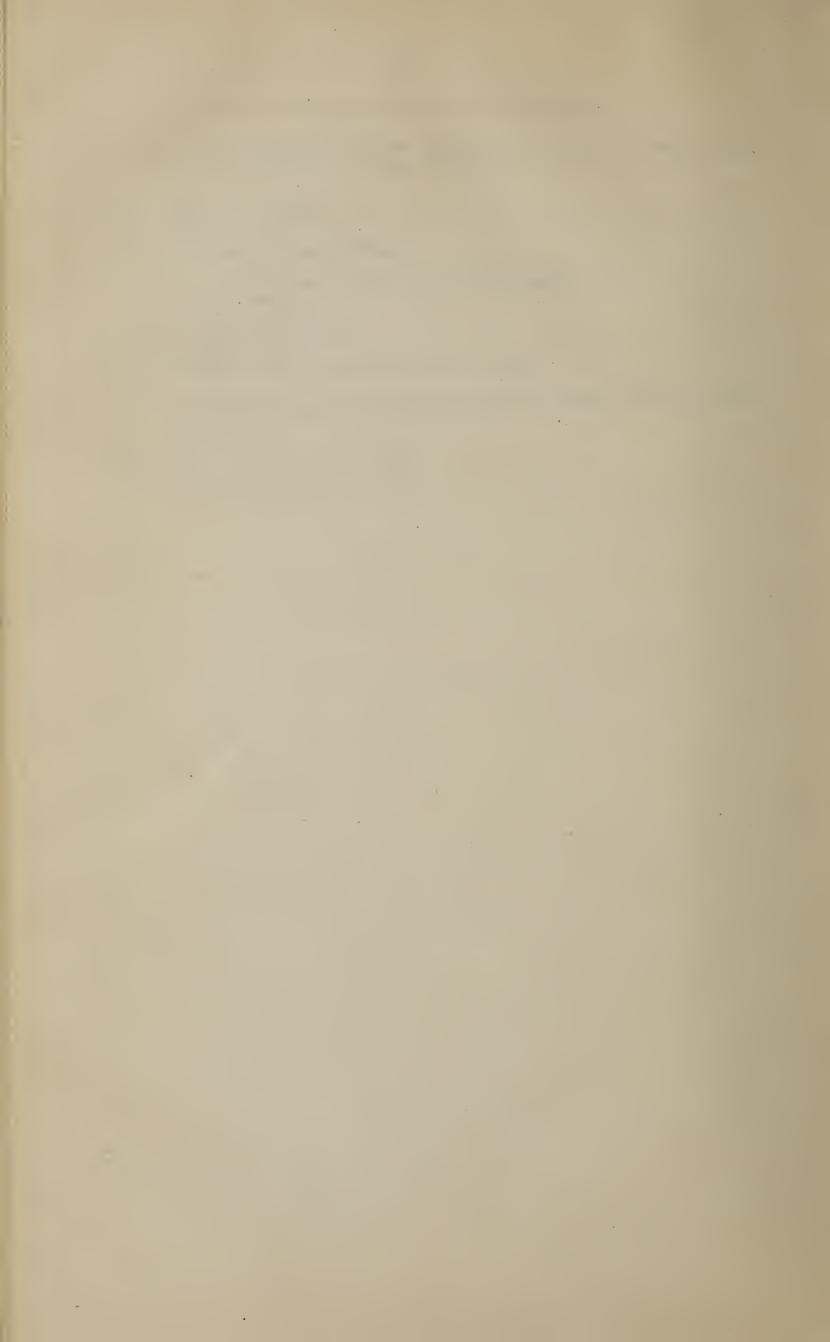
- F. I. D. \{\begin{aligned} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies. \end{aligned}

(46. Fictitious Firm Names.

- F. I. D. 47. Flavoring Extracts.
 48. Substances Used in the Preparation of Foods.
 - 49. Time required to reach decisions on different problems connected with the food and drugs act, June 30, 1906.

50. Imitation Coffee.
51. Coloring of Butter and Cheese.
52. Form of Label.
53. Formula on the Label of Drugs.





United States Department of Agriculture, BUREAU OF CHEMISTRY,

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 54-59.

54. Declaration of the quantity or proportion of alcohol present in drug products. 55. Method of stating quantity or proportion of preparations (containing opium, morphine, etc.) used in manufacturing other preparations. 56. Names to be employed in declaring the amount of the ingredients as required by the law. 57. Physicians' prescriptions: The status of packages compounded according to physicians' prescriptions and entering into interstate commerce. 58. The labeling of products used as food and drugs as well as for technical and other purposes. 59. National Formulary appendix.

(F. I. D. 54.)

DECLARATION OF THE QUANTITY OR PROPORTION OF ALCOHOL PRESENT IN DRUG PRODUCTS.

The question of stating the percentage of alcohol present in drug products has caused a multitude of inquiries. The following questions along this line serve as examples:

Is it necessary to give the amount of alcohol present in U. S. Pharmacopœial or National Formulary products? It seems to me that such a requirement is absurd, and not contemplated within the spirit of the act. None of them are patent medicines. Will I be compelled to tell how much alcohol is present in such goods?

If we apply for and obtain a serial number, must we in addition to putting this number on our labels state the per cent of alcohol?

Will it be necessary to give the per cent of alcohol present in such products as ether, chloroform, collodion, spirit of nitrous ether, and similar preparations?

The law is specific on the subject of declaring the amount of alcohol present in medicinal agents, as can readily be seen from the following language: "An article shall also be deemed misbranded * * * if the package fail to bear a statement on the label of the quantity or proportion of any alcohol * * * contained therein." No medicinal preparations are exempt, whether they are made according to formulæ given in the U. S. Pharmacopæia or National Formulary or formulæ taken from any other source. The serial number, with or without the guarantee legend, does not exempt a preparation from this requirement.

The law does not make any statement as to the amount of alcohol that may or may not be employed. It requires, however, that whatever amount be present shall be set forth on the label. The percentage of alcohol given on the label should be the percentage of absolute alcohol by volume contained in the finished product. The manner in which it should be printed is shown in F. I. D. 52.

James Wilson, Secretary of Agriculture.

Washington, D. C., March 13, 1907.

(F. I. D. 55.)

METHOD OF STATING QUANTITY OR PROPORTION OF PREPARATIONS (CONTAINING OPIUM, MORPHINE, ETC.) USED IN MANUFACTURING OTHER PREPARATIONS.

Many inquiries are received as to the method of stating the quantity or proportion of preparations (containing opium, morphine, etc.) used in the manufacture of other preparations. Of these the following are typical:

If the label on the bottle were to bear the words "Tincture of Opium," I reason that as this is a definite preparation, constituting a preparation of opium, and so definite as to its composition that to any intelligent person it expresses definitely all that it is desirable to express, the use of this title alone should be sufficient. I feel that as a preparation it is distinct from opium, and if this particular tincture is used in the manufacture of a preparation the mention of it alone should be sufficient.

Where extract or tincture of cannabis indica, or extract of opium, is employed in making other drug products, would it not be complying with the law if the use of such articles be clearly indicated on the label as prescribed by the law, or is it necessary to give the actual amounts of the drugs themselves represented by these preparations?

Names of drug products bearing any of the names of the ingredients enumerated in the act are construed as representing "preparations" within the meaning of the act; and if the same are clearly declared upon the label as required by Regulations 17 and 30, it will not be necessary to give the actual amount of the primary drugs used or represented by such article. It is desirable, however, that the word or words used in the law shall constitute the first part of the name of the product. For example: "Opium, Tincture of;" "Cannabis Indica, Extract of," followed by the amount of tincture or extract used.

James Wilson,
Secretary of Agriculture.

(F. I. D. 56.)

NAMES TO BE EMPLOYED IN DECLARING THE AMOUNT OF THE INGREDIENTS AS REQUIRED BY THE LAW.

Many inquiries are coming to this Department relative to the names that may be employed in declaring the quantity or proportion of the ingredients, as required by Congress.

The following are representative:

The word "alcohol" has received so much unfavorable notoriety during the last few years that we hesitate to place it upon our labels. Could we not employ some other words in place of it, such as "cologne spirits," "spirits of wine," "pure grain alcohol," etc.?

Would it be satisfactory for us to use "Phenylacetamide," or the following formula, C₆H₅NH(CH₃CO), for the chemical acetanilide?

One of our preparations contains trichlorethidene ethyl alcoholate, which would undoubtedly under the law be considered a derivative of chloral hydrate. Will it be satisfactory for us to use this name on our trade packages in giving the amount of this chemical present in the product?

In the manufacture of some of our products we use opium. It would, however, be a financial loss to state this fact on the label. Could we not say this preparation contains 20 grains of the concentrated extract of *Papaver somniferum* to the fluid ounce?

Dover's powder is mentioned in the regulations as one of the preparations of opium. It would seem at first glance that Dover's powder as a preparation, if mentioned on the label, would be all that could be required as to opium.

One of the objects of the law is to inform the consumer of the presence of certain drugs in medicines, and the above terms do not give the average person any idea as to the presence or absence of such drugs. In enumerating the ingredients, the quantity or proportion of which is required to be given upon the principal label of any medicinal preparation in which such ingredients may be present, the act uses only common names, and the permission to use any but such common names for any ingredients required to be declared upon the label is neither expressed nor implied in any part of the law.

The term used for acetanilide is "acetanilide" and not phenylacetamide. No reference is made to the use of the chemical formula in designating the presence of chemicals. The words "chloral hydrate" appear in the act, but not the chemical name trichlorethidene glycol. It can readily be seen that if the act were not closely adhered to in this connection there would soon be such a confusion and multiplicity of names and phrases that one of the objects of the act would be defeated.

The names to be employed in stating the quantity or proportion of the ingredients required by the act to appear on the label of all medicinal preparations containing same are—

First. Those used in the law for the articles enumerated; example, "alcohol," not "spiritus rectificatus."

Second. In the case of derivatives: (a) The name of the parent substance used in the act should constitute part of the name; example, "chloral acetone," not "trichlorethidene dimethyl ketone." (b) The trade name, accompanied in parentheses by the name of the parent substance; example, "dionine (morphine derivative)."

Third. Names of preparations containing the name of some ingredient used in the act. In such cases the name used in the act should constitute the first portion of the name of the preparation. (See F. I. D. 55.)

Fourth. Common names (such as laudanum, Dover's powder, etc.) of preparations containing an ingredient enumerated in the law, provided such name or names are accompanied in parentheses by some such phrase as "preparation of opium" or "opium preparation," followed by the number of minims or grains, as specified in the regulations; for instance, "laudanum (preparation of opium), 40 minims per ounce."

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., March 13, 1907.

(F. I. D. 57.)

PHYSICIANS' PRESCRIPTIONS.

The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.

Packages resulting from the compounding of physicians' prescriptions under the food and drugs act are the subject of many queries, of which the following are representative:

If a druggist compounds a physician's prescription and sends it into an adjoining State, will it be necessary to state upon the label the amount of alcohol, morphine, etc., that may be present?

Supposing a regularly licensed practicing physician has patients located in various States of the Union and supplies medicines to them through the mails, by express, and otherwise, do such packages come under the provisions of the law, and, if so, can the required information be given in pen and ink on the label?

We treat drug addictions on a very gradual tonic treatment reduction plan. For instance, if John Doe writes for information as to the home treatment for his addiction, I send him a symptom blank which contains, among other questions, an inquiry as to the kind of drug he uses, how he uses it, the length of time he has used it, etc. In addition to giving me a complete history of his case, he states he is using 10 grains of sulph. of morphine (each twenty-four hours), hypodermically or internally, as the case may be. In prescribing in his case I immediately put him on just one-half of the amount he reports as his daily allowance, combining same with a bitter tonic.

It is necessary for the reduction in drug cases to be made without the patient's knowledge. It is, of course, understood by all physicians that you can not trust

a drug habitué to properly make his own reductions, for, as a matter of fact, if he knew to what extent I was reducing his daily allowance of opiates, he would imagine the reduction too rapid, he would get frightened, and would take to his former drug for relief. Treatment prepared in this way I do not think would come under the head of a proprietary preparation or a patent medicine, as I prescribe the contents of each bottle to meet the requirements of each individual patient. All instructions as to the conduct of treatment and the use of auxiliary remedies are given by letter; consequently there are no printed labels or cartons containing any claims concerning the efficacy of this treatment.

I would be pleased to have you inform me whether in your opinion I would be violating the pure-food law in any manner, shape, or form should I continue to label my preparations as I am now doing, and in having them prepared in—— and forwarded direct to my patients in this and other States.

If a package compounded according to a physician's prescription be shipped, sent, or transported from any State or Territory or the District of Columbia to another State or Territory or the District of Columbia by a compounder, druggist, physician, or their agents, by mail, express, freight, or otherwise, the label upon such package is required to bear the information called for by Congress. If, however, the patient himself, or a member of his household, or the physician himself carries such package across a State line, and such package is not subject to sale, it is held that such package need not be marked so as to conform with the law, because such a transaction is not considered one of interstate commerce.

The package may be marked so as to comply with the act by either stamp, pen and ink, or typewriter, provided all such written matter is distinctly legible and on the principal label, as prescribed in Regulation 17.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., March 13, 1907.

(F. I. D. 58.)

THE LABELING OF PRODUCTS USED AS FOODS AND DRUGS AS WELL AS FOR TECHNICAL AND OTHER PURPOSES.

Frequent requests for information relative to the proper labeling of products bearing the names of foods and drugs, but used also for technical and other purposes, are received. The following are typical:

We will kindly ask you to advise us in regard to the new law that governs the line of oils. We manufacture a compound product, so-called "turpentine," which contains pure turpentine and a very fine petroleum product. It is used in most branches where pure turpentine is used, with the exception of medicinal purposes, for which we do not sell it.

We understand that if we were to sell any cotton-seed oil so branded as to indicate that it was intended to be used as a food, as, for example, under the

brand "Blank Salad Oil," it would be necessary to observe the requirements of the law referred to; but we are in doubt and would be glad to have your opinion as to whether a sale or shipment of this oil (for lubricating purposes) under the ordinary trade brand of cotton-seed oil, and without anything to indicate that it was of a quality suitable for use as a salad oil, would subject us to the provisions of the act.

During personal interviews the question of marking chemical reagents has also been discussed.

Products used in the arts and for technical purposes are not subject to the food and drugs act. It is, however, a well-recognized fact that many articles are used indiscriminately for food, medicinal, and technical purposes. It is also well known that some products employed for technical purposes are adulterated or misbranded within the meaning of this act. Inasmuch as it is impossible to follow such products into consumption in order to determine to what use they are finally put, it is desirable that an article sold under a name commonly applied to such article for food, drug, and technical purposes be so labeled as to avoid possible mistakes. The ordinary name of a pure and normal product, whether sold for food, drug, technical, or other purposes, is all that is necessary. Pure cotton-seed oil or turpentine may be sold without any restrictions whatever, whether such article is sold for food, medicinal, or technical purposes, but it is suggested that a cotton-seed oil intended for lubricating purposes, or a so-called turpentine consisting of a mixture of turpentine and petroleum oils, used by the paint trade, be plainly marked so as to indicate that they are not to be employed for food or medicinal purposes. Such phrases as the following may be used: "Not for Food Purposes," "Not for Medicinal Use," or for "Technical Purposes Only," or "For Lubricating Purposes," etc.

In order to avoid complication it is suggested that chemical reagents sold as such be marked with such phrases as the following: "For Analytical Purposes," or "Chemical Reagent," etc.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., March 13, 1907.

(F. I. D. 59.)

NATIONAL FORMULARY APPENDIX.

The National Formulary is one of the standards recognized under the law. The question has been asked a number of times whether the appendix of this authority would be construed as part and parcel of the book itself. On page IV of the preface it is distinctly stated that the formulæ collected in the appendix of the National Formulary are "no

longer designated as 'N. F.' preparations." This shows that these formulæ are not integral parts of the book under the law, which covers only those products of the National Formulary recognized as such by this authority. By this it is understood that if a drug product is sold under a name contained in the appendix of the National Formulary, it will not be necessary for such product either to conform to the standard indicated by the formula or to declare upon the label its own standard strength, quality, and purity if a different formula is employed in its manufacture. Such articles are, however, subject to the law in every other respect, as is the case of other medicinal products not recognized by the U. S. Pharmacopæia or National Formulary.

> JAMES WILSON, Secretary of Agriculture.

WASHINGTON, D. C., March 13, 1907.

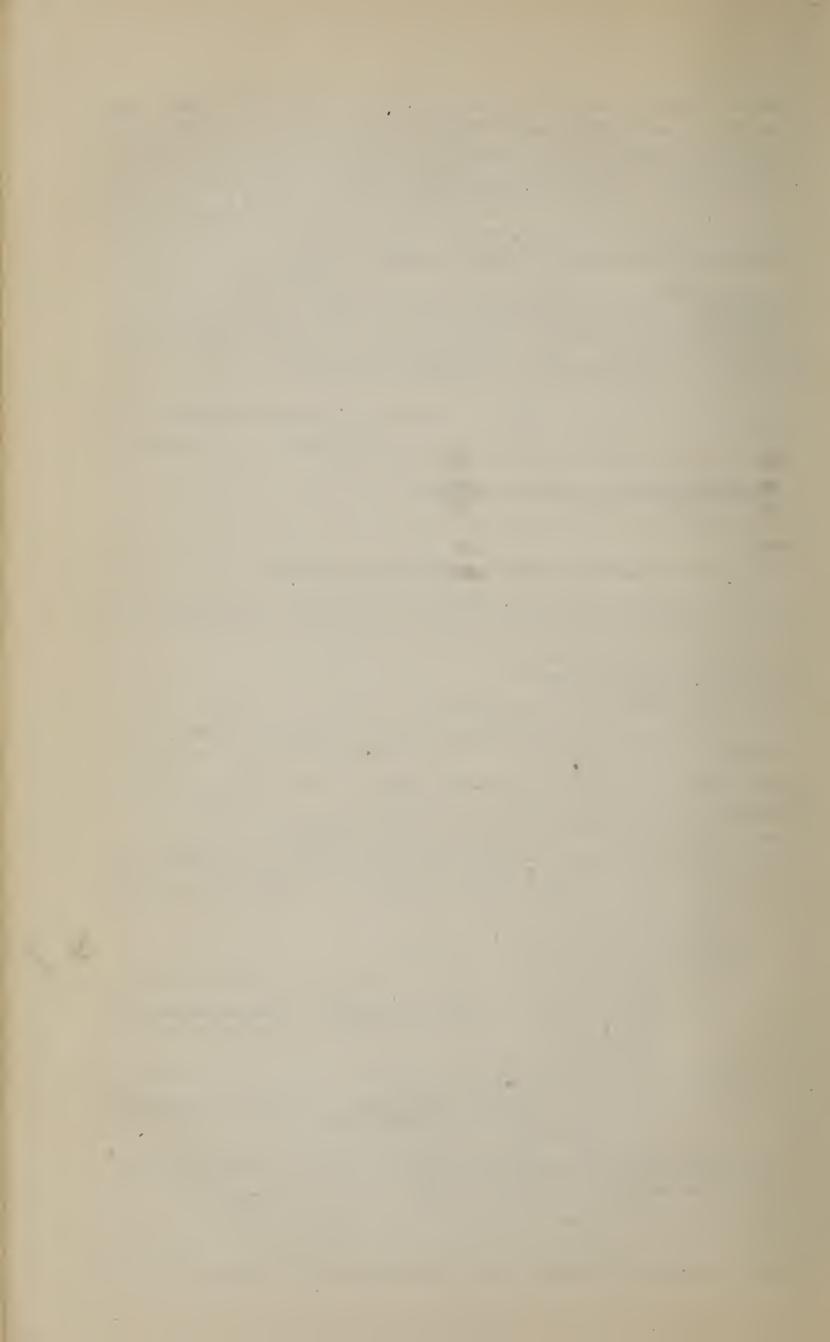
LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1–39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- (40. Filing Guaranty. F. I. D. 41. Approval of Labels. 42. Mixing Fours.

43. Relabeling of Goods on Hand.

- F. I. D. \{\begin{cases} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies.
- F. I. D. \begin{cases} \quad 46, as amended. Fictitious Firm Names. \\ 47. Flavoring Extracts. \\ 48. Substances Used in the Preparation of Foods. \end{cases}
 - 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
- 50. Imitation Coffee.
- F. I. D. { 51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.

 - 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
 - 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
- 56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law. F. I. D.
 - 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
 - 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
 - 59. National Formulary Appendix.



United States Department of Agriculture, BUREAU OF CHEMISTRY.

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 60-64.

60. Minor border importations. 61. Cocoa butter substitutes. 62. Guaranty on imported products. 63. Use of the word "compound" in names of drug products. 64. Labeling of sardines.

(F. I. D. 60.)

MINOR BORDER IMPORTATIONS.

Inquiry has frequently been made regarding the application of Regulation 33 (requiring a declaration to be attached to the invoice) to foods and drugs brought into the United States in small quantities by farmers living near the border. One correspondent says:

Farmers along the border are in the habit of occasionally bringing in, in their own teams, maple sugar in small quantities, also butter and like articles of food products of their own raising, and offering the same for entry at the different offices on the frontier. * * * The main question is as to whether or not the affidavits and other proof required by the pure-food law shall be required in these instances of minor importations of this class of articles.

Considering the nature of these importations it is held that Regulation 33 does not apply to them and that they may be imported without the declaration. Such products are subject to inspection, however, and if found to be in violation of the law will be excluded.

James Wilson, Secretary of Agriculture.

Washington, D. C., March 25, 1907.

(F. I. D. 61.)

COCOA BUTTER SUBSTITUTES.

A manufacturer writes:

We use in the preparation of chocolate sticks a guaranteed pure production of cocoanut oil. May this product be sold merely as confectionery, and not as chocolate sticks? If not, would it be satisfactory for us to mark the product as "Chocolate sticks prepared with substitute butter?"

Regulation 22 prohibits the sale, or offer for sale, in interstate or foreign commerce or in the District of Columbia or in any Territory of the United States, of a food or drug product which bears no label whatever if said product be an imitation of or offered for sale under the name of another article. It would clearly be a violation of the law to sell an article which was made in imitation of chocolate, even though it be sold under the general name of a confection. Such an article should be labeled in such manner as to correctly represent its true nature.

Regulation 25 (a) provides:

When a substance of a recognized quality commonly used in the preparation of a food or drug product is replaced by another substance not injurious or deleterious to health, the name of the substituted substance shall appear upon the label.

It is held that cocoa butter is the only fat that can properly be used in chocolate. The declaration of foreign fats merely as "substitute butter" is apparently not sufficient; the nature of the fat employed should be stated.

Secretary of Agriculture.

Washington, D. C., March 25, 1907.

(F. I. D. 62.)

GUARANTY ON IMPORTED PRODUCTS.

Many inquiries of the following type have been received by the Department:

We will take it as a favor if you will advise us if (since our goods are all imported and so must pass the custom-house before being sold) the fact of their having passed the customs authorities and the Department of Agriculture examination is not in itself a guaranty that they conform with the pure-food laws as defined by the act of Congress approved June 30, 1906, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, liquors," etc.

The Department makes a systematic inspection of imported foods and drugs when they arrive at the custom-houses; and while such inspection does not include an examination of samples taken from every package of the aforesaid articles, it is sufficient to indicate that the article is suitable to enter the country and be sent into interstate commerce as long as it retains its identity in the unbroken package. If imported foods and drugs are taken from the original packages and repacked, they become subject to inspection as if of domestic origin, and the persons handling and selling said articles are not immune from prosecution in the event that a subsequent inspection discloses that all or any portion of said foods or drugs are adulterated or misbranded according to the provisions of said statute or the regulations made thereunder.

Only a wholesaler, jobber, manufacturer, or other party residing in the United States can give a guaranty within the meaning of said act. A foreign manufacturer or other foreign dealer can not give the guaranty prescribed in said law, nor can the agent of such foreign manufacturer or dealer give said guaranty unless such agent be a resident of the United States and unless he actually sells the goods covered by the guaranty.

The person who owns and sells imported goods can make a guaranty for the purpose aforesaid, though the goods may be shipped directly by the firm of whom the guarantor buys them to the customer of the guarantor.

James Wilson, Secretary of Agriculture.

Washington, D. C., March 25, 1907.

(F. I. D. 63.)

USE OF THE WORD "COMPOUND" IN NAMES OF DRUG PRODUCTS.

Many inquiries are received concerning the use of the word "compound" in names of drug products. There seems to be a general impression that this word can be applied as a corrective to many misbranded products. The following extracts serve as examples:

You have on file our formula (active agents—croton oil and cascara), and we would ask if it is possible to call the same "castor pill compound" and comply with the regulations?

This liniment has been in use for forty years. The ingredients, each separately and collectively, are sanitary and highly curative. The one ingredient after which it was named happens to be present in the least proportion. Can not the compound be called by the name "Compound Sassafras Cream?"

An eminent jurist writes:

I shall be glad to know the views entertained by your Department as to when a druggist has satisfied this act by a label or printed matter which he puts on the package or bottle in relation to a compound. Take, for example, the product put on the market as Cascarin Compound, or Aloin Compound. I am impressed with the fact that such label must have added a statement as to what the other ingredients of the compound are. This may not mean, and probably does not mean, that the formula must be given or the exact proportions, but a purchaser has the right to know what is in the compound in order to determine for himself, or to receive proper advice, as to whether it is safe to be used.

In no case can a preparation be named after an ingredient or drug which is not present. The word "compound" should not be used in connection with a name which in itself, or together with representations and designs accompanying same, would be construed as a form of misbranding under the act.

It is held that if a mixture of drugs is named after one or more but not all of the active medicinal constituents (not vehicle) present in a preparation, the word "compound" can be used in connection with the name, (a) provided the active constituent after which the product is named is present in an amount at least equal to that of any other active medicinal agent present. Example: If it is desired to make a mixture consisting of oil of sandalwood, balsam copaiba, and castor oil, and call this product "Oil of Sandalwood Compound," the oil of sandalwood should constitute at least 33\frac{1}{3} per cent of the entire mixture. Or (b) provided the potent active constituent after which the product is named is present in sufficient amount to impart the preponderating medicinal effect. Example: If a product is named after the active constituent, strychnine, the strychnine or one of its salts should be present in sufficient amount to produce the preponderating medicinal effect of the preparation. Or (c) provided the complete quantitative formula, as outlined in the United States Pharmacopæia and National Formulary, be given on the principal label. A declaration of the complete quantitative formula, however, does not exempt the manufacturer or dealer from giving the information required by the act in the manner prescribed by the regulations. The ounce shall be the unit. The amounts of the ingredients present (excepting alcohol, which is to be stated in per cent) shall be given in grains or minims, and if it is desired the metric equivalent may be given in addition.

> James Wilson, Secretary of Agriculture.

Washington, D. C., March 23, 1907.

(F. I. D. 64.)

LABELING OF SARDINES.

Many inquiries have been made of this Department respecting the extent to which the term "sardine" can be used in food products entering into foreign or interstate commerce. The question of the proper labeling of fish of this kind was submitted by the Department to the Department of Commerce and Labor, Bureau of Fisheries. After reviewing the nomenclature and trade practices the Department of Commerce and Labor reached the following conclusion:

Commercially the name sardine has come to signify any small, canned, clupeoid fish; and the methods of preparation are so various that it is impossible to establish any absolute standard of quality. It appears to this Department that the purposes of the pure-food law will be carried out and the public fully protected if all sardines bear labels showing the place where produced and the nature of the ingredients used in preserving or flavoring the fish.

In harmony with the opinion of the experts of the Bureau of Fisheries, the Department of Agriculture holds that the term "sardine" may be applied to any small fish described above, and that the name "sardine" should be accompanied with the name of the country or State in which the fish are taken and prepared, and with a statement of the nature of the ingredients used in preserving or flavoring the fish.

It is held that a small fish of the clupeoid family, caught upon or near the shores of and packed in oil in Norway, or smoked and packed in oil, is properly labeled with the phrase "Norwegian Sardines in Oil," or "Norwegian Smoked Sardines in Oil," the nature of the oil being designated. In like manner a small fish of the clupeoid family caught upon or near the shores of and packed in France may be called "French Sardines in Oil," the nature of the oil being specified. Following the same practice, a fish of the clupeoid family caught on or near the shores of and packed in the United States may be labeled "American Sardines Packed in Oil," or "Maine Sardines Packed in Oil," or be given some similar appellation, the nature of the oil being stated. It is suggested that the name of the particular fish to which the term sardine is to be applied should also be placed upon the label—for example, "Pilchard," "Herring," etc.

James Wilson,
Secretary of Agriculture.

Washington, D. C., March 29, 1907.

LIST OF FOOD INSPECTION DECISIONS.

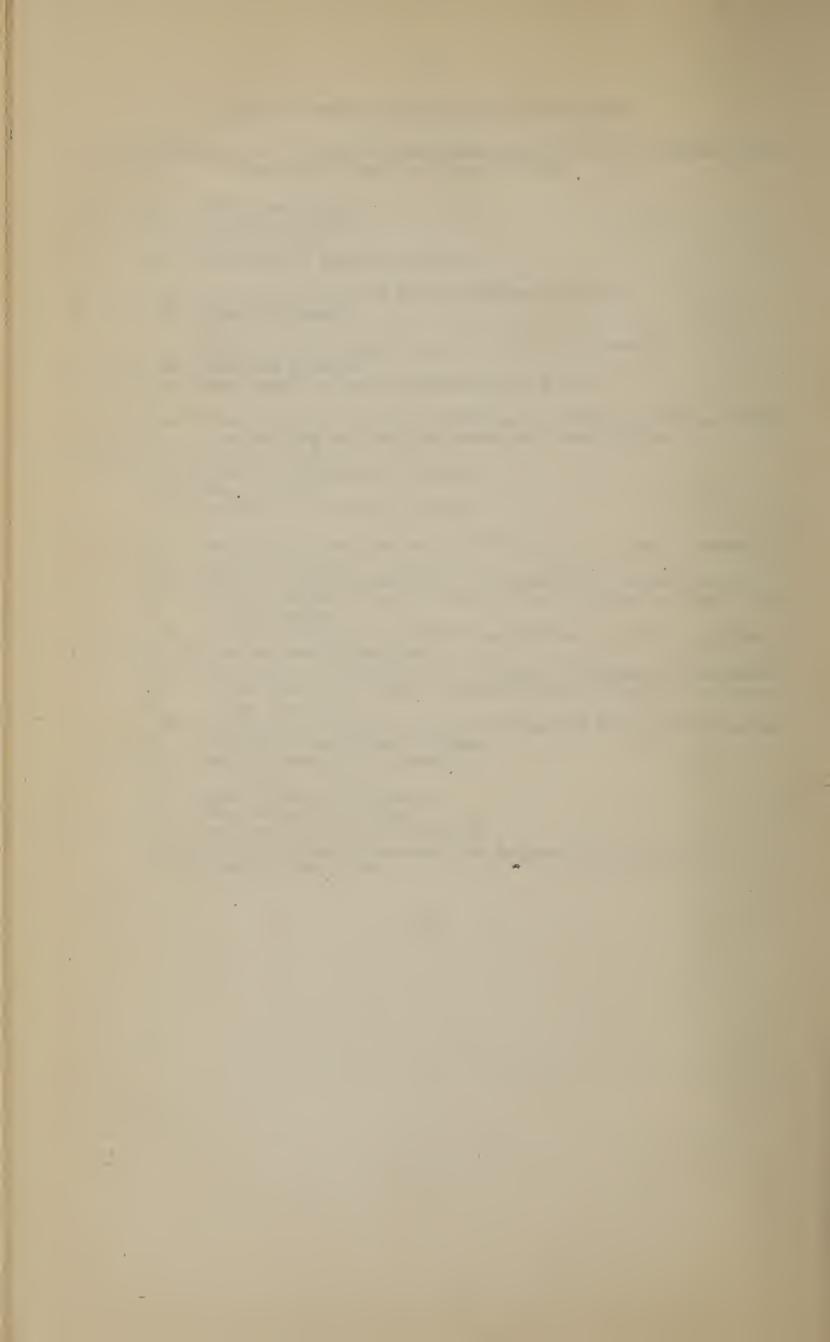
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 - 43. Relabeling of Goods on Hand.
- F. I. D. \{\begin{cases} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies. \end{cases}
- F. I. D. \(\{46.\) Fictitious Firm Names; also F. I. D. 46, as amended. \(\)
- - 48. Substances Used in the Preparation of Foods.
 - (49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
- 50. Imitation Coffee. F. I. D.

F. I. D.

- 51. Coloring of Butter and Cheese.52. Form of Label.
- 53. Formula on the Label of Drugs.
- (54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
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- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.
- 60. Minor Border Importations.
- 61. Cocoa Butter Substitutes.
- 62. Guaranty on Imported Products.
 - 63. Use of the Word "Compound" in Names of Drug Products.
 - 64. Labeling of Sardines.





United States Department of Agriculture,

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 65.

THE LABELING OF WHISKY, BLENDS, COMPOUNDS, AND IMITATIONS THEREOF.

The labeling of whisky, blends, compounds, and imitations thereof, under the food and drugs act of June 30, 1906, will be governed by the opinion of the Attorney-General, dated April 10, 1907, bearing the approval of the President, published herewith.

James Wilson, Secretary of Agriculture.

Washington, D. C., April 11, 1907.

THE WHITE HOUSE, Washington, April 10, 1907.

MY DEAR MR. SECRETARY:

In accordance with your suggestion, I have submitted the matter concerning the proper labeling of whisky under the pure-food law to the Department of Justice. I inclose the Attorney-General's opinion. I agree with this opinion and direct that action be taken in accordance with it.

Straight whisky will be labeled as such.

A mixture of two or more straight whiskies will be labeled "Blended whisky" or "whiskies."

A mixture of straight whisky and ethyl alcohol, provided that there is a sufficient amount of straight whisky to make it genuinely a "mixture," will be labeled as compound of, or compounded with, pure grain distillate.

Imitation whisky will be labeled as such.

Sincerely, yours,

THEODORE ROOSEVELT.

Hon. James Wilson,

Secretary of Agriculture.

OPINION OF THE ATTORNEY-GENERAL.

APRIL 10, 1907.

The President.

Sir: In accordance with your instructions, I have examined the papers referred to me by you, at the suggestion of the Secretary of Agriculture, and herewith submit you my opinion on certain questions which appear from the said papers to have arisen in connection with the labeling or branding of different kinds of spirit, claimed by their manufacturers or proprietors to be entitled to the name of "Whisky," with or without qualifying words. tion to the papers referred to me by you, I have received and considered a number of other papers submitted to me by various individuals, including Messrs. Hemphill and Worthington and Mr. W. M. Hough, as counsel for certain distillers and rectifiers interested in the questions under consideration, and I have personally gathered some further information which seemed to me material in view of the character of the questions involved.

These questions have arisen in the construction of section 8 of the act approved June 30, 1906, entitled:

"An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes,"

and generally known as "The pure food law." The portion of that law bearing upon the points in dispute is section 8, which, so far as material, is as follows:

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular. * * * That for the purposes of this act an article shall also be deemed to be misbranded: * * * In the case of food: First. If it be an imitation of or offered for sale under the distinctive name of another

article. * * * Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter, known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said arti-

cle has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged, so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

Before stating or discussing the particular questions as to which you desire my opinion, I think it will conduce to clearness to call attention to the general purpose of this act and to some considerations founded thereon.

The primary purpose of the pure food law is to protect against fraud consumers of food or drugs; as an incidental or secondary purpose, it seeks to prevent, or, at least, discourage the use of deleterious substances for either purpose; but its first aim is to insure, so far as possible, that the purchaser of an article of food or of a drug shall obtain nothing different from what he wishes and intends to buy. According to the recognized canons of statutory construction, the language of its provisions must be interpreted with reference to and in harmony with this primary gen-

eral purpose; so that, in determining the proper nomenclature for articles of food as defined in the act, the intention of the law will be best observed by giving to such articles names readily understood and conveying definite and familiar ideas to the general public, although such names may be inaccurate in the view of a chemist or physicist or an expert in some particular industrial art, as in the distillation and refining of spirits. Moreover, the same name may be given by dealers or by the general public to two or more substances varying very materially in their scientific characteristics and this fact must be given due weight in passing upon questions of branding or labeling under the law.

Human experience has associated certain impressions on the senses of taste and smell with the consumption of certain articles of food, and the so-called "flavor" which expresses the resultant of these impressions constitutes a factor of decisive weight in determining the similarity or identity of substances of this character to the mind of the ordinary member of the community, quite irrespective of the relative importance of these chemical or physical properties in the substances which impart this flavor as compared to their other chemical or physical properties. fact is aptly illustrated by a question considered at much length in the papers referred and also submitted to me as above, namely: "What is Whisky?" A chemist or a distiller might answer this question altogether differently from the ordinary purchaser of whisky for his own consumption; but the purchaser's view of the matter is material to attain the primary purpose of the pure food law; and I think it may be safely said that what he means by "whisky" when buying it is a distilled spirit, fit for use as a beverage and having the particular flavor which human experience has classified as that of "Whisky." Undoubtedly the flavors of different kinds of spirits all known as "Whisky" differ considerably, and it may be that the general impression of their similarity is due, in some measure, to imagination or imperfect memory; nevertheless, a distinct and definite idea is suggested to the mind by the words "whisky flavor;" this idea is an essential factor in ascertaining the identity of a spirit claimed to

be whisky, and, in my opinion, it is the decisive factor in determining the relative weight of the claims of two or more kinds of spirit to the name.

With this preliminary explanation, I proceed to state what I understand to be the questions as to which my opinion is desired. In substance, these are:

First. Under what circumstances should a distilled spirit be labeled or branded "Whisky" without any qualifying words?

Second. Under what circumstances should a liquid be marked a "Blend of whiskies," or "Blended whisky," or "Blended whiskies?"

Third. Under what circumstances should a liquid be marked as a "Compound of whisky," or "Compounded whisky," and what word or words, if any, must be added to such title to make the same appropriate under the law?

Fourth. Under what circumstances, if at all, could a distilled spirit, with additions of coloring and flavoring substances, be termed "Imitation whisky?"

Before dealing directly with these questions, I think it may be well to indicate the application of this law to a class of liquids affording a field for its interpretation with less opportunity for dispute—I refer to wines. It will not be questioned that to be branded or labeled "Sherry," "Port" or "Madeira," a wine must have inherently, and not because any other substance is added to it, the flavor known as that of sherry, port or madeira, as the case may be. There are different kinds of each of these wines; experts can recognize different brands or vintages by their respective flavors, and these flavors vary considerably; nevertheless, there can be no doubt that the sherry, the port and the madeira flavors are distinct from each other, and that each of them has some quality of its own shared by all varieties of the same species of wine.

There is, however, an evident distinction to be drawn between a wine such as sherry, port or madeira, and a wine such as champagne. In the view of a chemist or physicist, champagne would be doubtless described as "a compound," for it consists essentially of a wine, of sugar and of an aerating gas, three substances obviously "unlike." The

law, however, in my opinion, does not contemplate that an article should be marked as a "blend," "compound," or "imitation" unless its designation would be otherwise "false or misleading" to the consumer; and the name "Champagne" would indicate to any would-be purchaser, who was ordinarily intelligent and well-informed, a wine artificially sweetened and aerated, or, in other words, a composite substance.

To determine the proper use of the term "Blend" we must first note that the definition of the word in the law is novel and arbitrary. It is thus defined by Webster:

"Blend, n. A thorough mixture of one thing with another, as colors, liquors, etc.; a shading or merging of one color, tint, etc., into another, so that it cannot be known where one ends or the other begins."

There is nothing in this definition about "likeness" in the substances mingled: this feature is introduced for some special purpose in the law, and the latter must be interpreted so as to give effect to this purpose. To show this more clearly we may also note the same Dictionary's definition of "Compound." This is:

"Compound, n. That which is compounded or formed by the union or mixture of elements, ingredients, or parts; a combination of simples."

"Compound" and "Blend" are substantially synonymous when applied to mixtures of liquids in ordinary speech, but the Pure-Food Law establishes a distinction of its own between them based upon the character of the ingredients entering into the mixture. In discussing therefore what degree of "likeness" between the mingled substances will justify their designation as a "Blend" it must be always and carefully remembered (1) that "Blend" is meant to be something essentially different from "Compound," and (2) that the subject under consideration is a name for an article of food to be embodied in a label or brand in harmony with the primary purpose of the law as above explained. Without going into metaphysical distinctions, or needless explanations, it is my opinion that effect will be most surely given to the evident intent of this

provision of the law if it be held that "Blend," as a substantive, or "Blended," as an adjective, can be properly and legally used in brands or labels under the act of 1906 only when a single substantive, either in the singular or in the plural, need follow to appropriately and adequately designate the combination: thus we can speak of a "Blend of Teas" or a "Blended Tea," but not of a "Blend of Tea and Coffee." To state the same proposition in different language, I think the two articles mixed must be capable of accurate and sufficient description by a single generic term: they must be substances known by the same name, and that name must be sufficiently distinctive to afford reasonable warning to a purchaser.

If, therefore, the question be what ought to be called "Blend of sherry," or "Blended sherry," or "Blended sherries," I think that such terms could be applied with propriety only to a mixture of two or more sherries, and not to a mixture of sherry with port or with madeira. This is not because "likeness" does not exist between the three kinds of wine mentioned, nor because great similarity may not be found in their chemical composition: it is quite possible that, in the latter respect, some kinds of sherry would be found to have a greater resemblance to some kinds of port than to other kinds of sherry; just as the chemical composition of a diamond might have much greater similarity to that of coal than to that of some other gems; but the term "Blended sherry" could not be appropriate to a mixture of sherry and port; it would mislead an intending purchaser as to the fact that port entered into the combination; the latter might be named with equal propriety "Blended port." On the other hand, if this mixture should be termed a "Blend of port and sherry," there is no distinction in generic designation between a mixture of these two distinct wines and a mixture of two sherries or of two ports, and I think the law clearly intended there should be such a distinction. It might be, perhaps, consistent with the law to call such a mixture "Blended wines," but this title would be insufficiently specific; it might designate a mixture of burgundy and claret as well as one of port and sherry. In my opinion, it is the intent of the act of 1906

that the term "Blended sherry," or "Blend of sherry," or "Blend of sherries" shall designate a mixture of two or more kinds of sherry; while the titles "Compound of port and sherry" or "Compounded port and sherry" would appropriately designate a mixture of two unlike substances in the view of the law, namely, two distinct and different kinds of wine; "unlike" just as diamonds and coal are "unlike" substances.

It may be that by diluting neutral spirit (ethyl alcohol) with enough distilled water to reduce it to the normal alcoholic strength of sherry wine, and, by adding appropriate flavoring and coloring substances, a mixture can be produced which tastes and smells and looks like sherry, and when consumed produces substantially the same effects: this mixture, supposing it to contain no article deleterious to health, would be appropriately labeled or branded, under the law, "Imitation sherry." If it were mixed with real sherry, no one would for a moment claim that the two substances thus combined were sufficiently "like" to warrant the description of the resultant as a "Blend;" it could only be accurately labeled, under the law, as a "Compound of genuine and imitation sherries," a designation which would not probably promote its sale.

Applying the same principles to the choice of brands or labels for distilled spirits, and especially for whiskies, we are at once confronted by the question whether whisky corresponds to a wine like sherry or to a wine like champagne; that is to say, whether it is a natural or artificial spirit; meaning by the first term, of course, not that it exists anywhere as a product of nature, but that it is the resultant of the process of distillation alone, without needing any further addition to furnish its characteristic qualities. In the first case, it would be assimilated to brandy or rum; in the second contingency, to gin, since gin is essentially a distilled spirit, frequently as nearly neutral as may readily be, flavored by an infusion of juniper ber-I learn from the papers referred to me that the Department of Agriculture has reached the conclusion that whisky, like brandy and rum and unlike gin, is a natural spirit, its peculiar taste and aroma being imparted to it

in the course of distillation and arising primarily from essential oils existing in the substances from which it may be distilled; that is to say, it corresponds to a wine like sherry and not to a wine like champagne. This conclusion seems to be fully warranted by information contained in the papers before me and by such other information as I have been able to obtain; nevertheless, as hereinafter set forth, the statement may, perhaps, need some qualification, or, rather, some explanation. It is doubtful, however, whether the definition of "Whisky" contained in the papers aforesaid, and which I understand to have received the approval of the Department of Agriculture, is quite broad enough to meet the general intent of the law of 1906. This definition I understand to be as follows:

"Whisky is a distillate, at the required alcoholic strength, from the fermented mash of malted cereals, or from malt with unmalted cereals, and contains the congeneric substances formed with ethyl alcohol which are volatile at the ordinary temperatures of distillation, and which give the character to the distillate."

In Webster's Dictionary "Whisky" is defined as:

"An intoxicating liquor distilled from grain, potatoes, etc., especially in Scotland, Ireland, and the United States. In the United States, whisky is generally distilled from maize, rye, or wheat, but in Scotland and Ireland is often made from malted barley."

In Worcester's Dictionary it is defined as:

"A kind of spirit distilled from barley, wheat, rye, maize, potatoes, etc."

In Chambers's Encyclopedia of 1875, it is defined as follows:

"A spirit made by distillation from grain of any sort and from other materials, as buckwheat, potatoes and even turnips."

A large number of similar definitions from standard popular works of reference might be given, and I think there can be no doubt that a spirit generally known and described as "Whisky" is often distilled from potatoes and occasionally from some other substances which could scarcely be correctly classed as cereals. I note this fact

because it appears to me contrary to the spirit and subversive of the purpose of the pure food law to adopt a definition which would exclude from the name any substance generally understood by the public to be entitled to it; that is to say, the nomenclature adopted to give effect to the Act ought to be, in my opinion, popular and not scientific. This matter, however, is of only subordinate importance in connection with the questions immediately under discussion.

It being admitted that whisky is a natural spirit having certain "congeneric substances," which, in the language of the above definition "give the character to the distillate," it seems obvious that a mixture of two or more different whiskies as thus defined, whether their differences arise from the character of the substances from which they were distilled or from the method of distillation used in each case respectively, or even from their several ages and the environment in which they were kept subsequently to distillation, would be appropriately termed a "Blend of whiskies," or "Blended whisky," or "Blended whiskies;" any one of these three terms would be appropriate, provided that each article entering into the combination, standing alone, would be appropriately designated as "Whisky."

The mixture of a spirit properly designated as "Whisky" with another spirit which, standing alone, would not be properly designated as "Whisky," such as ethyl alcohol, must, in my opinion, be labeled or branded as a "Compound," or as "Compounded." This question has given rise to a very animated dispute, and it is understood that great importance is attached by dealers to its determination, which is thought to involve serious pecuniary loss or gain to some or others among them: I have, therefore, considered it very carefully. In Chambers's Encyclopædia, above quoted, Volume III, article "Distillation," occurs the following passage:

"If only alcohol and water passed over in distillation, all spirits, from whatever extracted, would be the same; but this is not the case. Brandy, which is distilled from wine, has a peculiar essential oil derived from the grape and also some acid; rum is impregnated with an essential

oil from the sugar cane, and with other impurities; malt liquor has the essential oil of barley, etc. It is these essential oils that give to the various spirits their distinguishing flavors. Some of the oils and other impurities are disagreeable and positively noxious, and it is one of the objects of rectifying to remove these. The mellowing effects of age upon spirits is owing to the evaporation, or spontaneous decomposition of the essential oils. Newly distilled spirits are, in general, fiery and specially unwholesome."

This statement from a popular work seems to be fully sustained by works of greater scientific authority and shows, in my opinion, that, for the purposes of the pure food law, neutral spirit or ethyl alcohol, if absolutely pure, would be, not only like, but actually identical, whether it. were derived from fruit, from cereals, from sugar cane, or from any other of the many substances which can furnish alcohol. Inasmuch as a state of absolute purity cannot be attained by any treatment appropriate for commercial purposes, it may be, perhaps, more nearly accurate to say that each of these different kinds of neutral spirit is a like substance to one of any other kind; but, if we concede that ethyl alcohol is a "like substance" to whisky, then we must also concede that brandy and rum are "like substances" to whisky also, because each of them, on precisely the same grounds, can be likened to neutral spirit. It is undoubtedly true that only a very small proportion (less than the half of 1 per centum) of the ingredients entering into whisky are different from those entering into neutral spirit; but this is equally true of brandy and rum, and it is precisely those substances which "give the character to the distillate" in each of these cases.

In the nature of things there can have been, as yet, no judicial decisions as to the meaning of the terms used in the pure food law, but section 3287 of the United States Revised Statutes, as amended in 1879, 1880 and 1899, has been cited to me to show the "likeness" of whisky and neutral spirit as matter of law; I find, however, nothing in that section at all relevant to the present discussion. It requires the cask to indicate "the particular name of such distilled spirits as known to the trade, that is to say, high wines, alcohol or spirits, as the case may be." It is undoubtedly

true that in distillation under the improved methods of modern times a neutral spirit may be produced at a later stage of the process out of something which at an earlier stage of the process was crude whisky or so-called "high wines;" but this no more shows neutral spirit to be a "like substance" to whisky than vinegar is a "like substance" to cider or to wine, or that beef is a "like substance" to veal.

My attention has been likewise called to the case of Taylor Company v. Taylor in the Court of Appeals of Kentucky (85 S. W. R., 1085) as establishing the propriety of designating a mixture of whisky and ethyl alcohol as "a blend" or "blended." In this case it was determined that the selling of whisky mixed with neutral spirit under a label which might lead the uninitiated to suppose that it was a "straight whisky" was a fraud upon the public as well as upon the manufacturer of the "straight" article. In its opinion the court says:

"The defendant may properly sell his brand of 'Old Kentucky Taylor,' provided he so frames his advertisements as to show that it is a blended whiskey; but he cannot be allowed to impose upon the public a cheaper article and thus deprive appellant of the fruits of his energy and expenditures by selling his blended whiskey under labels or advertisements which conceal the true character of the article, for this would destroy the value of the appellant's trade."

This decision was rendered on March 17, 1905, more than a year before the approval of the pure food law; in speaking of a mixture of whisky and neutral spirit as "blended whisky," the court had not, of course, in mind the definition of "Blend" in that law, which, as above noted, is altogether novel and arbitrary; on the other hand, the decision may have been considered by the Congress when it framed the pure food law; and the special and original definition of "Blend" given in that law, may have been intended for the very purpose of making more difficult such frauds as the Court of Appeals in Kentucky condemned in this case.

I conclude, therefore, that according to the true intent of the pure food law, a mixture of whisky with neutral spirit must be deemed a "Compound" and not a "Blend," although the spirit may be a distillate from the same substance used to furnish the whisky, and that such a mixture stands on the same footing as a mixture of whisky and brandy or of whisky and rum.

The definition of "Whisky" as a natural spirit involves as its corollary that there can be such a thing as "Imitation whisky." If the same process were followed of which we spoke in connection with artificial wine, namely, if ethyl alcohol, either pure or mixed with distilled water, were given, by the addition of harmless coloring and flavoring substances, the appearance and flavor of whisky, it is impossible to find any other name for the product, in conformity with the pure food law, than "Imitation whisky."

An interesting question remains, the question, in my opinion, of greatest difficulty connected with the subject; namely, whether a mixture of a liquid such as has just been described, or, indeed, a mixture of ethyl alcohol itself with whisky ought to be labeled "Whisky" at all. When the words "Compound" or "Compounded" are used in the act, it is, in my judgment, ordinarily necessary, that two substances, at least, should be mentioned as entering into the combination described; in other words, it would not be accurate to call a mixture of port and sherry "Compounded sherry" or "Compounded port;" such a mixture must be designated as "Sherry compounded with port" or "Port compounded with sherry" or "Compound of port and sherry." As above stated, this would be, to say the least, no less true if an imitation sherry were used to mix with a genuine sherry, and, at first sight, it would seem that the same reasoning would deny the name "Whisky" to a compound of "straight" whisky and ethyl alcohol whether with or without coloring and flavoring substances. is, however, a distinction between the two cases, and it is not universally true that two substantives must follow "Compound" or "Compounded," although it is true, in my opinion, that only one substantive can appropriately follow "Blend" or "Blended."

In the first place, we may note that the "Imitation sherry" described above would not be a wine at all, while

ethyl alcohol is clearly a spirit; this distinction, however, is not essential. But, so far as I know, no practice exists in the wine trade of mixing port with sherry or genuine with artificial sherry and calling the mixture by the name of either one of its ingredients. On the other hand, there is and has been for a long time in existence a well-known practice of mixing ethyl alcohol with whisky to give the latter an artificial age and thus produce the so-called "mellowness" of old whisky, which is caused by the gradual and partial evaporation of the essential oils contained in new whisky; and it seems to be a long and well established custom in the trade to call the mixture of whisky and alcohol thus produced "Blended whisky." For the reasons above set forth, I think the law has forbidden the use of the adjective, but it is otherwise with the noun.

In the Encyclopædia Britannica of 1878, Vol. VII, under the head "Distillation," there is the following statement:

"Flat bottomed and fire heated stills are considered the best for the distillation of malt spirit, as by them the flavor is preserved. Coffey's still, on the other hand, is the best for the distillation of grain spirit, as by it a spirit is obtained almost entirely destitute of flavor and of a strength varying from 55 to 70 over proof. Spirit produced of this high strength evaporates at such a low temperature that scarcely any of the volatile oils on which the peculiar flavor of spirits depends are evaporated with it, hence the reason why it is not adapted for the distillation of malt whiskey which requires a certain amount of these oils to give it its requisite flavor. The spirit produced by Coffey's still is, therefore, chiefly used for making gin and factitious brandy by the rectifiers, or for being mixed with malt whiskies by the wholesale dealers."

The practice therein described has become during the past twenty-eight years much more general than it then was, in the United States as well as in Great Britain, and improvements in the art of distillation have rendered it much easier and more profitable.

As above explained, I consider "Champagne" a suitable label or brand for the composite wine known by that name. If a natural wine existed which was sweet and sparkling and also generally known as "Champagne," a mixture of the two might be, I think, appropriately called "Com-

pound "or "Compounded champagne," and, in accordance with this analogy, I conclude that a combination of whisky with ethyl alcohol, supposing, of course, that there is enough whisky in it to make it a real compound and not the mere semblance of one, may be fairly called, "Whisky;" provided the name is accompanied by the word "Compound" or "Compounded," and provided a statement of the presence of another spirit is included in substance in the title. I am strengthened in this conclusion by understanding from the papers you have referred to me that it has been reached by the Department of Agriculture as well.

The following seem to me appropriate specimen brands or labels for (1) "straight" whisky, (2) a mixture of two or more "straight" whiskies, (3) a mixture of "straight" whisky and ethyl alcohol, and (4) ethyl alcohol flavored and colored so as to taste, smell, and look like whisky:

- (1) Semper Idem Whisky: A pure, straight whisky mellowed by age.
- (2) E Pluribus Unum Whisky: A blend of pure, straight whiskies with all the merits of each.
- (3) Modern Improved Whisky: A compound of pure grain distillates, mellow and free from harmful impurities.
- (4) Something Better than Whisky: An imitation under the pure food law, free from fusel oil and other impurities.

In the third specimen it is assumed that both the whisky and the alcohol are distilled from grain.

I remain, sir, yours very respectfully and truly,
CHARLES J. BONAPARTE,
Attorney-General.

United States Department of Agriculture, BUREAU OF CHEMISTRY.

H. W. WILEY, Chief of Bureau.

FOOD INSPECTION DECISIONS 66-68.

66. The use of sugar in canned foods. 67. Polishing and coating rice. 68. Labeling of food and drug products "Manufactured for," "Prepared for," "Distributed by," etc.

(F. I. D. 66.)

THE USE OF SUGAR IN CANNED FOODS.

Numerous inquiries have been addressed to the Department respecting the proper labeling of canned fruits and vegetables to which sugar has been added. Sugar is a wholesome food product, and is also condimental. It reveals its own presence by its taste. Its addition to a food product can not be objected to on the ground of injury to health.

It is held by this Department that sugar can be used in the preparation of all food products where it is not used for fraudulent purposes. If sugar be added without notice to Indian corn which is not sweet, for the purpose of making it appear a sweet corn, to be sold as such, it is used for a fraudulent purpose, and for this reason is prohibited by the law.

In section 7 of the law it is provided that a food is adulterated "if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed." It is evident, therefore, that a food product can not be mixed with any other substance for the purpose of concealing damage or inferiority. A vegetable which is not naturally sweet could not be sold as one which is naturally sweet by mixing with sugar without violation of the law, unless the addition of sugar is plainly indicated on the label.

The addition of sugar to canned vegetables is not for preservative purposes. Added sugar increases the tendency to fermentation. It is added wholly as a condimental ingredient.

It is held, therefore, that the addition of sugar to a substance not 31335—07 M

naturally sweet, converting it into a substance which might seem naturally sweet, is justified if the label plainly indicates that this sweetening material is added. In other cases, where no deception is practiced, the mention of the presence of sugar is not required.

The term "sugar," as used herein, is confined to sucrose (saccharose), either in a solid form or in solution.

James Wilson, Secretary of Agriculture.

Washington, D. C., April 15, 1907.

(F. I. D. 67.)

POLISHING AND COATING RICE.

It has been represented to the Department that it is a very common practice in this country in the preparation of rice for commerce to treat it in the following manner:

- 1. The rough rice is passed through a set of stones, or shellers, which removes the hull.
- 2. The product is subjected to a series of scouring machines by which the bran and cuticle are removed.
- 3. The rice is passed through a machine that is known as the brush, which removes a portion of the flour, or more commonly known as polish.
- 4. The rice is introduced into a warm revolving drum or cylinder holding often as much as 4,000 pounds, and glucose and talc are added in the following manner and in about the following proportion: As the rice is fed into the drums a small proportion of glucose and talc are applied, namely, glucose one one-thousandth and talc one three-thousandth part of the whole. The object of the glucose is to form a coating by means of which a part of the talc is held on the surface of the rice.

It is stated that the rice is coated for the following reasons:

- 1. The coating makes the rice less susceptible to dust and other foreign matter during transportation and storage.
- 2. It is, in a measure, a preventive against the attack of the weevils and worms which are so destructive in warm climates.

It has also been represented that in some instances paraffin is used instead of glucose and that rice starch is sometimes used in place of talc for the purpose of finishing rice according to the method described above.

In submitting these representations it has been asked if the process above described is permitted under the food and drugs act of June 30, 1906. It is not clear to the Department that coating rice in this way protects it in any manner from dust. Evidence of an expert character is also on file in the Department showing that unpolished rice is no more subject to the ravages of the weevil than the polished article.

It is the opinion of the Department that no coating of any kind

can be used in the manner indicated if the product "be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed." In each case whether or not such a result be secured is a question of fact to be decided by the evidence.

It is held by the Department that rice treated in the manner indicated above with glucose and starch should be labeled in all cases with the name of the extraneous substances, as

"COATED WITH GLUCOSE AND STARCH."

In such declarations all of the food substances used for coating should be mentioned. Any coloring matter or other substances that may be employed to change the tint of the rice should be declared on the label.

The question of the wholesomeness of paraffin, talc, or other non-food substances used is to be construed in such a way as to protect the health of those most susceptible to their influences. Rice is a diet often prescribed for those suffering from impaired digestion. The use of paraffin in such cases is at least of questionable propriety, and in the opinion of the Department it should be excluded from food products. Under the fifth provision of foods, section 7 of the food and drugs act, June 30, 1906, and under Regulation 14 the use of talc is permitted, provided that each package be plainly labeled with the name of this preservative and the proper directions for removal be given.

James Wilson, Secretary of Agriculture.

Washington, D. C., *April* 15, 1907.

(F. I. D. 68.)

LABELING OF FOOD AND DRUG PRODUCTS "MANUFACTURED FOR," "PREPARED FOR," "DISTRIBUTED BY," ETC.

Numerous inquiries are received relative to the marking of products not manufactured by the party in whose name they are sold. The following are representative:

We prepare products on the special prescription of the customer, shipping the same to him in barrels to be rebottled, labeled, and packed for the market. Many of our customers are asking how the law affects this business.

Manufacturing chemists ship goods to us, made according to our formula; we bottle and label the goods. Should our name appear on the labels as manufacturers or distributers? All of our remedies are given a distinctive name.

If we put up a cough remedy for John Smith & Co., would it be sufficient to label it "Sold by," or must it be labeled "Prepared for John Smith & Co."?

Will it be necessary to have appear on the label our name as the actual manufacturer of the product or will it only be necessary that the words "Prepared only by" be cut out of the label and instead the words "Prepared for" be

printed thereon, just before the name of the Blank Chemical Company? You will, we think, appreciate that, as the preparation is made over their private formula and for their account, we acting merely as the agent for this manufacturer, we should not care to have our name attached to it or to any other preparation of this kind put out by another concern and should be obliged to discontinue the business entirely should it be required that our name appear on the labels for this preparation.

I would respectfully call your attention to the injustice the enforcement of Regulation 18 (a) of Circular 21 will be to manufacturers of plain unmixed food products like sweet corn or tomatoes. This regulation enables jobbers to demand that their names be placed on the labels to the exclusion of that of the manufacturer and to enforce their demand. The remedy is a simple one and seems to be wholly within the intent of the law, viz, require that the name of manufacturer and place of manufacture be put upon every package offered for sale, and that it be held misbranded if this is not the conspicuous feature of all labels on all packages of food, whether plain, mixed, or compounded.

In considering the above inquiries it should be borne in mind that the law forbids all forms of misrepresentation. Food mixtures and compounds having "distinctive names" must in all cases bear the name of the place of manufacture. No drug products, whether simple, mixed, or compounded, with or without "distinctive names," are required to bear the name of the manufacturer or producer, or the place where manufactured or produced, except when sold under proper name brands, i. e., brands in which both the given name and the surname are used. All food and drug products sold under such proper name brands should bear the name of the manufacturer or producer and the place of manufacture or production. In all cases where the name of party or place is stated upon the label such name must be the true name of the actual manufacturer, producer, or packer and the true name of the place where the article was manufactured, produced, or packed.

If, for trade reasons, when not required by law, a name or a place be given upon the label of foods or drugs manufactured or packed for any person, firm, or corporation by another person, firm, or corporation, one of two forms of labels is allowed, viz:

- (a) The name of the actual manufacturer or packer and the place where the goods were actually manufactured or packed may be given, or
- (b) The name of the person, firm, or corporation for whom the goods are manufactured or packed or by whom they are distributed may be given, if preceded by the words "Prepared for," "Manufactured for," "Distributed by," etc. The phrase "Sold by" is not satisfactory. The approved phrase shall be set in type not smaller than eight-point (brevier) caps.

This rule holds even if the formula or prescription be furnished or owned by the parties for whom the goods are manufactured or packed.

Foods and drugs repackaged within a State and sold only within that State are not subject to the Federal law; but repackaged foods or drugs which enter interstate commerce or which are sold in the District of Columbia or in the Territories are subject to the law and should be labeled in accordance with this decision.

> JAMES WILSON, Secretary of Agriculture.

Washington, D. C., *April* 18, 1907.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- 40. Filing Guaranty. F. I. D. 41. Approval of Labels.
 42. Mixing Flours.
 43. Relabeling of Goods on Hand.
- F. I. D. \{\begin{cases} 44. \ \text{Scope and Purpose of Food Inspection Decisions.} \\ \begin{cases} 45. \ \text{Blended Whiskies.} \end{cases}
- 46. Fictitious Firm Names; also F. I. D. 46, as amended. F. I. D. \ \ 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.
 - 49. Time required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
- 50. Imitation Coffee. F. I. D.
 - 51. Coloring of Butter and Cheese.52. Form of label.

 - 53. Formula on the Label of Drugs.
 - 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
 - 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
- 56. Names to be Employed in Declaring the Amount of the Ingredi-F. I. D. ents as Required by the Law.
 - 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
 - 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
 - 59. National Formulary Appendix.
 - 60. Minor Border Importations.
 - 61. Cocoa Butter Substitutes.
- F. I. D. \{62. Guaranty on Imported Products.
 - 63. Use of the Word "Compound" in Names of Drug Products.
 - 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- 66. The Use of Sugar in Canned Foods.
- 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.



United States Department of Agriculture,

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 69.

INSPECTION OF FOOD AND DRUGS AND IDENTIFICATION OF INSPECTORS.

In connection with the enforcement of the food and drugs act, June 30, 1906, inspectors of the Bureau of Chemistry will visit establishments in which food and drug products are manufactured, stored, or sold. They will make report to the Bureau regarding conditions of manufacture and will take samples wherever it is desired, paying the regular prices for such samples.

In case the report of the inspector, or the examination of the sample taken by him, discloses a violation of the law, no action will be taken until the dealer or manufacturer has been notified and afforded a hearing before the Board of Food and Drug Inspection. The preliminary hearing in each case may be held before the chief of the laboratory making the examination. In case of an adverse decision the recommendation of the chief of the laboratory, together with a digest of the testimony, must be submitted to the Board of Food and Drug Inspection for final action.

According to Regulation 5 (a)—

The parties interested therein may appear in person or by attorney and may propound proper interrogatories and submit oral or written evidence to show any fault or error in the findings of the analyst or examiner.

It is held that the interested parties need not necessarily appear in person or by attorney, but, instead, may submit a brief to the Board of Food and Drug Inspection stating their side of the case.

If the results of the inspection and examination indicate that the law has not been violated, or if it is believed by the Department that prosecution is unwarranted because of irregularity of sample, or for other reason, the dealer will be notified that no further action will be taken with reference to that sample.

No information will be given in any case by an inspector or branch laboratory of the Bureau of Chemistry regarding the report of an inspection of a factory or the result of an analysis. No statement will be made at any time except as mentioned above regarding the analysis of a sample that is found to be in accordance with the law. No certificate of analysis will be given, and no report other than the notice of a violation of the law above referred to. Requests for reports upon samples taken will be answered by a copy of this decision.

The following form 1 for the identification of inspectors has been adopted:

UNITED STATES DEPARTMENT OF AGRICULTURE,	
Washington, D. C.,, 191	
This is to certify that	
Signature:)
hose signature is shown above and whose photograph appears opposite, stame with the seal of the Department, is a duly appointed food and drug inspected is authorized to inspect establishments manufacturing and dealing in find drugs and products entering into their manufacture, under the food rugs act, June 30, 1906. This authorization expires	ctor
(Secretary)	

In addition to the above, the form includes a photograph of the inspector, the whole bound in a stiff cover.

H. W. WILEY,
FREDERICK L. DUNLAP,
GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., May 14, 1907.

¹ The italicized words have been added to the form, since the original decision was rendered, for more complete identification.

United States Department of Agriculture,

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISIONS 70-72.

70. Abuse of Guaranty for Advertising Purposes.71. Labeling of Succotash,72. Use of Guaranties and Serial Numbers Thereof.

(F. I. D. 70.)

ABUSE OF GUARANTY FOR ADVERTISING PURPOSES.

The attention of the department has been called repeatedly of late to the abuse, for advertising purposes, of the serial number assigned to a guaranty. The Department of Agriculture accepts no responsibility for the guaranty which the manufacturer or dealer f.les. Particular attention must be paid to the fact that it must neither be directly stated nor implied in any fashion that the Department of Agriculture or the United States Government guarantees or indorses the products to which the guaranty and serial number are attached. The guaranty represented by the serial number is the guaranty of the manufacturer and not of the Government.

To facilitate business a serial number is assigned to this guaranty, and the guaranty is filed in the Department of Agriculture for the purpose of verifying the serial number when it is used on packages of goods.

The misuse of the serial number is a misrepresentation, and in each case of such an abuse the serial number will be withdrawn and the guaranty returned after proper notice. Serial numbers, however, which have been issued and passed into commerce prior to withdrawal will be respected by the department in any action which may be brought against dealers selling goods bearing the number which is improperly used.

The attachment of the serial number or guaranty to articles which are not foods or drugs is also regarded as a misrepresentation on which a similar action will be based.

H. W. WILEY,
FREDERICK L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., May 14, 1907.

(F. I. D. 71.)

LABELING OF SUCCOTASH.

A manufacturer writes as follows:

We respectfully call your attention to the canned article known as succotash, which is composed of green sweet corn and lima beans. Both dried and green beans are used. The question to which we desire an answer is this: Is it sufficient to call the product "Succotash"?

The word "succotash," if used without qualification, is understood to imply that the product designated is composed of green sweet corn and green beans. If soaked beans or soaked corn (i. e., dried beans or corn softened in water) are employed, the name should be accompanied by declaration of that fact, such declaration to be in type not smaller than eight-point (brevier) capitals.

H. W. WILEY,
FREDERICK L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., May 14, 1907.

(F. I. D. 72.)

USE OF GUARANTIES AND SERIAL NUMBERS THEREOF.

A misapprehension exists as to the requirements of the regulations for the enforcement of the food and drugs act, June 30, 1906, in regard to placing the serial number on articles manufactured by persons who have filed a guaranty with the department and to whom a serial number has been issued identifying the said guaranty. Many have the impression that if a guaranty be filed the serial number which is assigned thereto must be used on all foods or drugs manufactured by them.

Regulation 9 provides two general methods of guaranty. The first is described in subdivision (b) of Regulation 9, as follows:

(b) A general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty with the words, "Guaranteed under the food and drugs act, June 30, 1906."

The second is described in subdivision (d) of Regulation 9, as follows:

(d) If the guaranty be not filed with the Secretary of Agriculture as above, it should identify and be attached to the bill of sale, invoice, bill of lading, or other schedule, giving the names and quantities of the articles sold.

The statement in subdivision (b) that when a guarantor is assigned a serial number the said number shall appear should not be construed as mandatory. The meaning is that if a manufacturer wishes to make effective the guaranty filed with the department, he must place the legend and serial number on his goods, otherwise no protection is afforded to his customers in the absence of a special agreement or the alternative as provided in subdivision (d) of Regulation 9.

Regulation 9, in its entirety, is intended to provide for the enforcement and administration of section 9 of the food and drugs act, which reads as follows:

SEC. 9. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

A study of the law in connection with the regulations makes it apparent that the intention is to provide a means whereby the manufacturer can assume responsibility under the law for the character of the goods manufactured by him, after they have passed out of his possession into the hands of the person who purchased them from him. In no case is a guaranty a good defense, unless it be from the person who sold the goods to the person offering the guaranty as a defense. In order to simplify the procedure, the department volunteers to act as custodian of the guaranty, which is an offer on the part of the manufacturer to free dealers, reselling his goods, from responsibility, under the law, for possible misbranding or adulteration. In order that the guarantor may convey this intention on his part to purchasers of his goods, a serial number is assigned to such guarantor, and by placing this number on his goods he fixes his responsibility. Whether he desires to enter into an agreement of this kind with the purchaser of his goods is a matter wholly within his discretion, and he can use the serial number or not for this purpose, as he may please. The use of

the number will save the trouble of individual guaranties with each individual transaction or each individual customer. In other words, the label itself will carry notice that the manufacturer holds himself responsible, under the law, to the persons who purchase goods directly from him, for any misbranding or adulteration.

> H. W. WILEY, Frederick L. Dunlap, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., May 17, 1907.

LIST OF FOOD INSPECTION DECISIONS.

F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.

(40. Filing Guaranty.

F. I. D. 41. Approval of Labels. 42. Mixing Flours.

- [43. Relabeling of Goods on Hand.
- F. I. D. \\ \begin{cases} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies. \end{cases}

146. Fictitious Firm Names; also F. I. D. 46, as amended.

F. I. D. 47. Flavoring Extracts.

- [48. Substances Used in the Preparation of Foods.
- [49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

F. I. D. 50. Imitation Coffee. 51. Coloring of Butter and Cheese. 52. Form of Label.

- 53. Formula on the Label of Drugs.
- 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
 56. Names to be Employed in Declaring the Amount of the Ingredients

- F. I. D. as Required by the Law.

 Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
 - 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

59. National Formulary Appendix.

- F. I. D. 60. Minor Border Importations.
 61. Cocoa Butter Substitutes.
 62. Guaranty on Imported Products.
 63. Use of the Word "Compound" in Names of Drug Products.

64. Labeling of Sardines.

F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.

- F. I. D. 66. The Use of Sugar in Canned Foods.
 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 73.

INTERSTATE TRANSPORTATION OF IMPORTED MEATS AND MEAT-FOOD PRODUCTS.

Regulation 64 of the Regulations Governing the Meat Inspection of the United States Department of Agriculture (Amendment No. 10 to B. A. I. Order No. 137) provides as follows:

Imported meats and meat-food products which have not been mixed or compounded with or added to domestic meats may be transported by any common carrier from one State or Territory or the District of Columbia to any other State or Territory if the packages containing them shall be marked "Inspected under the food and drugs act, June 30, 1906," and are so marked when received for transportation.

It is held that packing cases, boxes, or other coverings containing imported meats or meat-food products in the original true containers which have not been mixed or compounded with or added to domestic meats may be marked with the legend "Inspected under the food and drugs act, June 30, 1906," by the shipper. The interstate transportation under this legend of domestic meats and meat-food products or of imported meats and meat-food products which have been mixed or compounded with or added to domestic meats will subject both the shipper and the carrier to heavy penalties.

H. W. WILEY,
FREDERICK L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., May 21, 1907. 26988—10

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. 40. Filing Guaranty. 41. Approval of Labels. 42. Mixing Flours. 43. Relabeling of Goods on Hand.
- F. I. D. 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.
- F. I. D. 46. Fictitious Firm Names; also F. I. D. 46, as amended. 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.
- F. I. D. 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906. 50. Imitation Coffee. 51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.
- F. I. D. 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products. 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations. 56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law. 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce. 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes. 59. National Formulary Appendix.
- F. I. D. 60. Minor Border Importations. 61. Cocoa Butter Substitutes. 62. Guaranty on Imported Products. 63. Use of the Word "Compound" in Names of Drug Products. 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- F. I. D. 66. The Use of Sugar in Canned Foods. 67. Polishing and Coating Rice. 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
- F. I. D. 70. Abuse of Guaranty for Advertising Purposes. 71. Labeling of Succotash. 72. Use of Guaranties and Serial Numbers Thereof.

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United States Department of Agriculture,

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 74.

CERTIFICATES FOR IMPORTED MEATS AND MEAT-FOOD PRODUCTS OF CATTLE, SHEEP, SWINE, AND GOATS.

The following inquiry has been received regarding certificates for imported meats required by Regulation 32:

There being no inspector who could certify invoices for canned meats, we of course can not import these goods any more. We would respectfully ask if a certificate as to purity, by the manufacturer, would not answer the purpose in this special case, there being no one in to officially certify.

The meat-inspection law of June 30, 1906, forbids the transportation in interstate or foreign commerce of the meat or meat-food products of cattle, sheep, swine, and goats which are diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food. Meat or meat-food products of those animals to which has been added any substance which lessens wholesomeness, or any drug, chemical, or harmful dye or preservative, other than common salt, sugar, wood smoke, vinegar, pure spices, and saltpeter, may not be transported in interstate of foreign commerce. The law further requires the ante-mortem and post-mortem inspection of the animals which furnish meat and meat-food products for interstate or foreign commerce. All these requirements are based on the principle that uninspected meats of this character may be dangerous to health.

The food and drugs act of June 30, 1906, provides that a product which does not comply with the provisions of the act "or is otherwise dangerous to health" shall be denied the right of importation. It is held, therefore, that, except as hereinafter provided, imports of meat or meat-food products of cattle, sheep, swine, and goats shall be subject to the same restrictions as meats of domestic origin. Such meats and meat-food products shall be accompanied by certificates showing their freedom from disease, or entry into the United States will be denied. For entry of meat or meat-food products of animals other than cattle, sheep, swine, and goats, including fish, only the declaration required for foods other than meats is necessary.

The certificate shall be that of an official inspector of the country, district, or city in which the meat is manufactured. It shall be speci-

fied in the certificate that the animals from which the meat or meatfood products which are covered by the certificate are derived were inspected before and after slaughter and were found to be in a healthy condition (see Regulation 32); that the animals furnishing the meat or meat-food products are cattle, sheep, swine, or goats, as the case may be; and that the meat or meat-food products covered by the certificate have been mixed with the meat of no other animal.

The official inspector who signs the certificate shall have his authority viséed before the United States consul. One authorization of this kind will be sufficient for all shipments signed by the same inspector, and it will not be necessary to furnish a new authorization unless a new inspector signs the certificate.

The following are acceptable forms of certificates:

The certificate mentioned above will not take the place of port inspection as to the condition of the shipment on arrival, whether it is fit for human food, whether it is infected with vermin, or whether it contains any of the substances forbidden by the regulations for the enforcement of the meat-inspection law. This port inspection will be made by the inspectors of the Bureau of Chemistry, and if the meat or meat-food product be found not to conform to the law, the shipment will be rejected even if the certificate be in due form.

Stearin, for mixture with domestic oils, not animal, may be admitted without certificate, if the importer executes a penal bond conditioned upon the subsequent export of all stearin thus imported.

Meat and meat-food products of horses and dogs will not be allowed entry into the United States.

Frederick L. Dunlap, Geo. P. McCabe, Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., July 1, 1907.

LIST OF FOOD INSPECTION DECISIONS.

F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.

(40. Filing Guaranty.

F. I. D. 41. Approval of Labels.
42. Mixing Flours.
43. Relabeling of Goods on Hand.

- F. I. D. \{\}44. Scope and Purpose of Food Inspection Decisions. \}45. Blended Whiskies.

F. I. D. \(\begin{cases} \) 46, as amended. Fictitious Firm Names. \(\) 47. Flavoring Extracts.

- 48. Substances Used in the Preparation of Foods.
- (49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee.

F. I. D.

F. I. D. 51. Coloring of Butter and Cheese.

52. Form of Label.

- 53. Formula on the Label of Drugs.
- 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients

as Required by the Law.

- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

[59. National Formulary Appendix.

60. Minor Border Importations.

F. I. D. 61. Cocoa Butter Substitutes.
62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.

64. Labeling of Sardines.

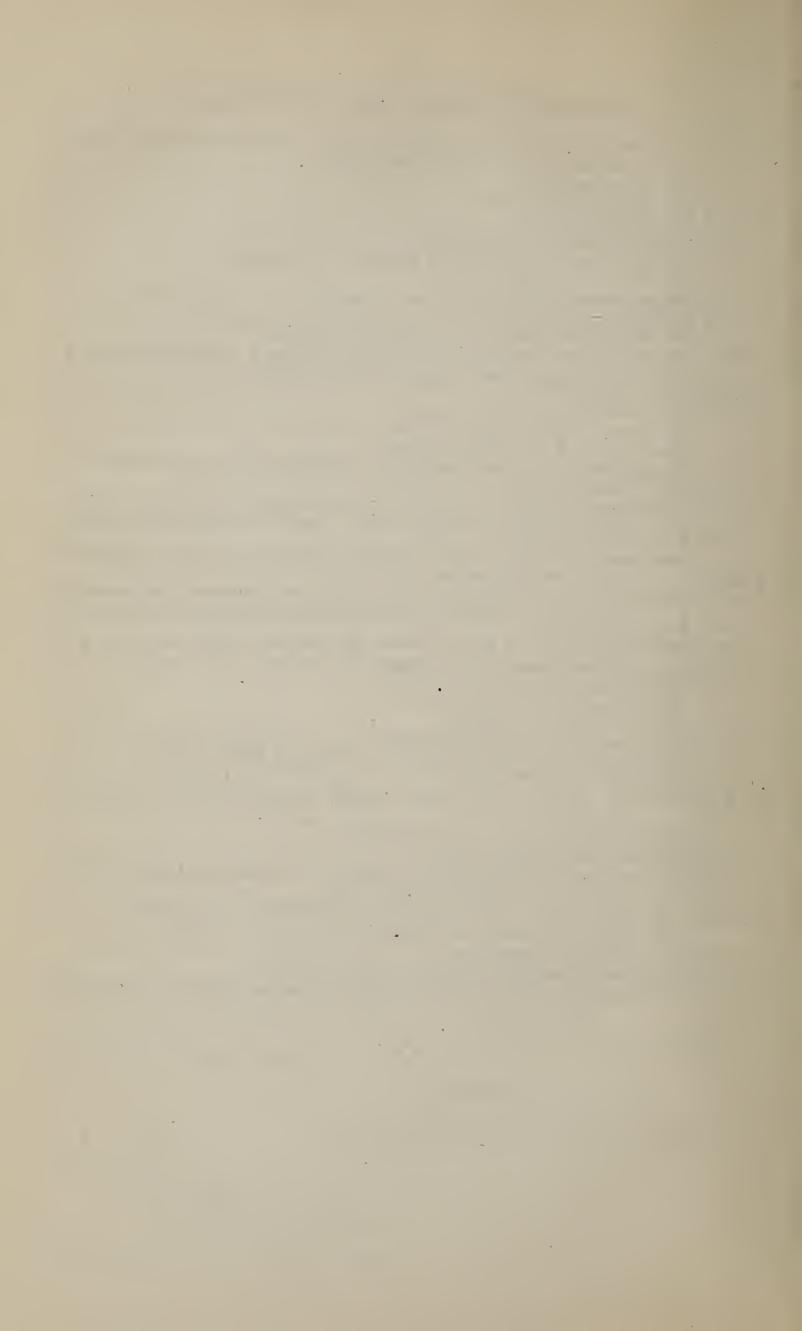
F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.

66. The Use of Sugar in Canned Foods.

- 67. Polishing and Coating Rice.
- 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.

[70. Abuse of Guaranty for Advertising Purposes.

- 71. Labeling of Succotash.
 - 72. Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.



United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 75.

THE LABELING OF MIXTURES OF CANE AND MAPLE SIRUPS.

The director of the agricultural experiment station at Orono, Maine, in a recent letter made the following statement:

There are in Maine many sirups which are labeled something like this: "A Fancy Quality Sirup Made from Pure Maple and White Sugar." Many of these sirups carry but little maple, one company saying that in a sirup analogous to this they put 90 per cent of cane sugar and 10 per cent of maple.

When both maple and cane sugars are used in the production of sirup the label should be varied according to the relative proportion of the ingredients. The name of the sugar present in excess of 50 per cent of the total sugar content should be given the greater prominence on the label; that is, it should be given first. For example, a sirup the sugars of which consist of 51 per cent cane sugar and 49 per cent maple sugar would be properly branded as "Sirup Made from Cane and Maple Sugar," or as "Cane and Maple Sirup." The terms "maple sugar" and "maple sirup" may only be used on the label as part of the name when those substances are present in substantial quantities as ingredients. They should not appear on the label as part of the name when only a small quantity of those substances is used to give a maple flavor to the product. A cane sirup containing only enough maple sirup or maple sugar to give a maple flavor is properly labeled as "Cane Sirup, Maple Flavor" or "Cane Sirup Flavored with Maple."

Whenever it is necessary to declare cane sugar (sucrose) on a label it should be declared as cane sugar and not as white sugar.

Frederick L. Dunlap, Geo. P. McCabe,

Board of Food and Drug Inspection.

Approved:

W. M. HAYS,

Acting Secretary of Agriculture.

Washington, D. C., July 5, 1907.

5451°—No. 75—13



United States Department of Agriculture,

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 76.

DYES, CHEMICALS, AND PRESERVATIVES IN FOODS.

It is provided in regulation 15 of the rules and regulations for the enforcement of the food and drugs act, that the Secretary of Agriculture shall determine by chemical or other examination those substances which are permitted or inhibited in food products; that he shall determine from time to time the principles which shall guide the use of colors, preservatives, and other substances added to foods; and that when these findings and determinations of the Secretary of Agriculture are approved by the Secretary of the Treasury and the Secretary of Commerce and Labor, the principles so established shall become a part of the rules and regulations for the enforcement of the food and drugs act.

The law provides that no food or food product intended for interstate commerce, nor any food or food product manufactured or sold in the District of Columbia or in any Territory of the United States, or for foreign commerce, except as thereinafter provided, shall contain substances which lessen the wholesomeness or which add any deleterious properties thereto. It has been determined that no drug, chemical, or harmful or deleterious dye or preservative may be used. Common salt, sugar, wood smoke, potable distilled liquors, vinegar, and condiments may be used. Pending further investigation, the use of saltpeter is allowed.

Pending the investigation of the conditions attending processes of manufacture, and the effects upon health, of the combinations mentioned in this paragraph, the Department of Agriculture will institute no prosecution in the case of the application of fumes of burning sulphur (sulphur dioxid), as usually employed in the manufacture of those foods and food products which contain acetaldehyde, sugars, etc., with which sulphurous acid may combine, if the total amount of sulphur dioxid in the finished product does not exceed 350 milligrams per liter in wines, or 350 milligrams per kilogram in other food products, of which not over 70 milligrams is in a free state.

No prosecutions will be based on the manufacture, sale, or trans-

pertation of foods and food products manufactured or packed during the season of 1907 which contain sodium benzoate in quantities not exceeding one-tenth of 1 per cent, or benzoic acid equivalent thereto, provided sodium benzoate or benzoic acid has hitherto been generally used in such foods and food products.

The label of each package of sulphured foods, or of foods containing sodium benzoate or benzoic acid, shall bear a statement that the food is preserved with sulphur dioxid, or with sodium benzoate, or benzoic acid, as the case may be, and the label must not bear a serial number assigned to any guaranty filed with the Department of Agriculture nor any statement that the article is guaranteed to conform to the food and drugs act.

The use of any dye, harmless or otherwise, to color or stain a food in a manner whereby damage or inferiority is concealed is specifically prohibited by law. The use in food for any purpose of any mineral dye or any coal-tar dye, except those coal-tar dyes hereinafter listed, will be grounds for prosecution. Pending further investigations now under way and the announcement thereof, the coal-tar dyes hereinafter named, made specifically for use in foods, and which bear a guaranty from the manufacturer that they are free from subsidiary products and represent the actual substance the name of which they bear, may be used in foods. In every case a certificate that the dye in question has been tested by competent experts and found to be free from harmful constituents must be filed with the Secretary of Agriculture and approved by him.

The following coal-tar dyes which may be used in this manner are given numbers, the numbers preceding the names referring to the number of the dye in question as listed in A. G. Green's edition of the Schultz-Julius Systematic Survey of the Organic Coloring Matters,

published in 1904.

The list is as follows:

Red shades:

107. Amaranth.

56. Ponceau 3 R.

517. Erythrosin.

Orange shade:

85. Orange I.

Yellow Shade:

4. Naphthol yellow S.

Green shade:

435. Light green S. F. yellowish.

Blue shade:

692. Indigo disulfoacid.

Each of these colors shall be free from any coloring matter other than the one specified and shall not contain any contamination due to imperfect or incomplete manufacture. The question of the entry into the United States of vegetables greened with copper salts has not been finally determined. Pending the determination and decision of this matter by the Secretary of Agriculture, all vegetables greened with copper salts which do not contain an excessive amount of copper will be admitted to entry if the label bears a statement that sulphate of copper or other copper salts have been used.

This food inspection decision is to be construed in connection with regulations 14 and 31 of the Rules and Regulations for the Enforcement of the Food and Drugs Act. Regulation 14 provides that poisonous and deleterious preservatives shall only be applied externally, and the preservatives in food products shall be of a character which shall not permit the permeation of any preservative to the interior, or any portion of the interior, of the product. It further provides that the preservative must be of such a character that, until removed, the food products are inedible, and that when these products are ready for consumption if any portion of the added preservative shall have penetrated the food product, the said food product shall then be subject to the regulations for food products in general.

Regulation 31 provides that food products intended for export may contain added substances not permitted in foods intended for interstate commerce, when the addition of such substances does not conflict with the laws of the country to which the food products are to be exported, and when such substances are added in accordance with the direction of the foreign purchaser or his agent.

No prosecution will be based on the sale of foods and food products manufactured or packed in the United States prior to the issuing of this decision, where the composition of such foods and food products is at variance with the requirements of this decision, if the nature of the variation be plainly stated on the label. In every case, however, the burden of proof will be on the manufacturer to show that the goods were manufactured or packed prior to the date of this decision.

H. W. WILEY,
FREDERICK L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

GEO. B. CORTELYOU,

Secretary of the Treasury.

OSCAR STRAUSS,

Secretary of Commerce and Labor.

Washington, D. C., June 18, 1907.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
 - (40. Filing Guaranty.

41. Approval of Labels. 42. Mixing Flours. F. I. D.

- 43. Relabeling of Goods on Hand.
- §44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies. F. I. D.
 - 46. Fictitious Firm Names; also F. I. D. 46, as amended. 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.

F. I. D.

- 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee. F. I. D.

F. I. D.

51. Coloring of Butter and Cheese.52. Form of Label.

- 53. Formula on the Label of Drugs.
- (54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients

as Required by the Law.

- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.
- 60. Minor Border Importations.
- 61. Cocoa Butter Substitutes.
- 62. Guaranty on Imported Products.
 - 63. Use of the Word "Compound" in Names of Drug Products. 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- 66. The Use of Sugar in Canned Foods.
 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc. F. I. D.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
 - (70. Abuse of Guaranty for Advertising Purposes.
- 71. Labeling of Succotash.
 - 72. Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.

MEMORANDUM TO ACCOMPANY FOOD-INSPECTION DECISION ON DYES, CHEMICALS, AND PRESERVATIVES.

I. PROHIBITION OF PRESERVATIVES.

Section 7 of the food and drugs act, June 30, 1906, provides that, for the purposes of the act, an article shall be deemed to be adulterated in the case of food if it contain any added poisonous or other deleterious ingredient which may render such article injurious to health. The decision states that it has been determined that no drug, chemical, or harmful or deleterious dye or preservative may be used in the preparation of food and food products. The board was influenced in framing this portion of the decision by the following considerations:

Among those substances added in greater or less amounts to food and food products for the purpose of coloring or of inhibiting bacterial action are those chemical substances which may be classed generically as dyes and preservatives. It is clearly the intent of the food and drugs act to inhibit the use of these substances as well as any others which are poisonous and deleterious to health. Whether or not dyes and preservatives are harmful is a matter which can only be determined by experimental evidence, and both classes have been subjected to investigation with the main idea of determining this point. Not only have investigations been conducted by many leading experts in this and other countries, but extended investigations have been instituted by the Department of Agriculture.

The classes of substances which have been investigated by the Department of Agriculture include essentially all of the well-known preservatives, including such types as boracic acid and borax, salicylic acid and its salts, benzoic acid and its salts, sulphurous acid and its salts, and formaldehyde.

The evidence which has accumulated as the result of all these researches conducted in the Department of Agriculture, as well as the result obtained as the outcome of other researches, both in the United States and abroad, points so strongly to the poisonous properties of preservatives that their use as a class should, under the act, be inhibited in foods and food products.

In order to obtain the views of eminent physiologists and hygienists, health officers, and physicians in the United States as to the propriety of using preservatives in foods, a list of questions was sent out from the Department of Agriculture, to which a large number of replies was received. These questions and the replies have been tabulated as follows:

1. Are preservatives, other than the usual condimental preservatives, namely, sugar, salt, alcohol, vinegar, spices, and wood smoke, injurious to health?

Affirmative	218
Negative	33

2. Does the introduction of any of the preservatives which you deem injurious to health render the foods injurious to health?

Affirmative	22	2
	2	9
		-
Total	25	1

3. If a substance added to food is injurious to health, does it become so when a certain quantity is present only, or is it so in any quantity whatever?

Affirmative _	 	169
	,	79
	-	- 1
Total		248

4. If a substance is injurious to health, is there any special limit to the quantity which may be used which may be fixed by regulation or by law?

Affirmative	68
	183
	-
Total	251

5. If foods can be perfectly preserved without the addition of chemical preservatives, is their addition ever advisable?

Affirmative	12
Negative	247
•	
Total	259

It can readily be seen from this tabulation that the opinions expressed point overwhelmingly to the fact that preservatives as a class are injurious to health, and hence their use is, under the act, inhibited.

II. USE OF SULPHUR FUMES PERMITTED IN CERTAIN CASES.

The decision further provides that pending investigation of processes of manufacture and of effect upon health, the Department of Agriculture will institute no action where the fumes of burning sulphur are used in the manufacture of foods and foodstuffs containing acetaldehyde, sugars, etc., with which the sulphur dioxid may combine, but the decision limits the total amount of sulphur dioxid in a liter of wine, or a kilogram of other food products, to 350 milligrams, and further provides that only 70 milligrams of this may be in a free state; the residual sulphur dioxid must be in combination with the acetaldehyde, sugars, etc.

While it is true that sulphurous acid and its salts belong to the class of preservatives which are prejudicial to health, and in consequence their use is inhibited, yet with respect to sulphur dioxid, under certain conditions of use (as in the sulphuring of wine casks in the preparation of wine, in the preparation of evaporated or dried fruits, in the manufacture of certain sugars, etc.), it is rendered more or less inert. There is evidence to show that when sulphur dioxid is used as above indicated it combines, for example, with the acetaldehyde of

the wine, thus forming a compound (so-called aldehyde-sulphurous acid) which is relatively harmless. In dried fruits in the preparation of which sulphur dioxid has been used there is reason for believing that it may all be present in this so-called "combined" condition, probably to a large extent, if not wholly, in combination with the sugars present. There is also reason for believing that sulphur dioxid may combine with protein and cellulose, but probably all of these "combined" forms are not equally inert from a physiological point of view.

The evidence is not sufficiently conclusive to condemn at present the use of sulphur dioxid under those conditions in which it may be present in this combined form, but it is necessary to limit its presence in such cases so as to avoid the presence of excessive quantities of free sulphurous acid, the toxic effect of which is marked.

The limit in food products has been set at 350 milligrams of total (that is, both free and combined) sulphur dioxid per liter, or kilogram, with an allowance of not over 20 per cent of this amount in a free state. This standard has been reached by a study of a large number of analyses of typical samples of food products which were obtained either in the open market or at ports of entry. That the use of sulphur dioxid in the preparation of wines, evaporated fruits, molasses, etc., has in some cases been greatly abused is apparent from a study of these analyses. To illustrate this point the following analyses of evaporated and dried fruits, purchased in the open market, are given:

	Milligrams of
	sulphur dioxid
	per kilo.
Dried peaches	3,072
California apricots	2,842
Evaporated apricots	1, 792
Dried apples	1, 419
Evaporated apples	1, 738

Especially is this abuse apparent when a comparison is made with other samples, likewise obtained in the open market.

Millig	rams of
sulph	ır dioxi d
pe:	r kilo.
Evaporated raisins	_ 225
Evaporated apricots	_ 190
Evaporated apples	4.5
Evaporated apples	_ 3.3
California prunes	_ 3.3
Dried apples	6.6
Dried apples	_ 9
Fancy cleaned currents	4.5

Other figures might be quoted to show that very wide variations exist in the total amount of sulphur dioxid found in this class of

foods, but these few are sufficient to illustrate the point that there is no "commercial necessity" for the existence of sulphur dioxid in the very large amounts shown in the first set of analyses, and in order to protect the public and minimize any possible danger that might arise from undue sulphuring it is necessary to restrict the use of sulphur dioxid within the limits suggested in the accompanying food inspection decision.

The limit of 350 milligrams of sulphur dioxid is also exceeded in a few samples of molasses on the market to-day. Molasses has been found containing as much as 1,395 milligrams of sulphur dioxid per kilogram. Such cases of undue sulphuring are comparatively rare, and the results of many analyses show that in this class of foodstuffs the sulphur dioxid may by care be reduced to amounts wholly within the limits set.

The following analyses show the amount of sulphur dioxid usually found in molasses and the ordinary variations to which it is subject:

Milligr	ams of
sulphur	dioxid
per l	kilo.
New Orleans molasses	None.
New Orleans molasses	310
New Orleans molasses	155
B. and O. brand, New Orleans molasses and corn sirup	25
Porto Rico molasses	8
New Orleans molasses	211
Magnolia brand	100
Rockwood molasses (New Orleans)	359

In the manufacture of wines it is usually considered that the need for sulphur dioxid is greatest in the nonfortified sweet wines, and in general it may be said that the larger the amount of sugar present the greater is the amount of sulphur dioxid used, but such a rule is by no means universal, illustrating the fact that in sound wines the use of sulphur dioxid is often carelessly controlled and no special pains taken to limit the amount to the quantity necessary to achieve the purpose for which it is used, and thus avoid unnecessary amounts.

An examination of the wines as they are found to-day on the market shows that it is desirable to restrict the amount of total sulphur dioxid to 350 milligrams per liter. Wines have been offered for import, for example, containing much more than this amount of total sulphur dioxid, but there is every reason to believe that this excessive amount is due to lack of careful control. As the sulphured wine ages the sulphur dioxid, as such, gradually disappears, either by combination with the constituents of the wine or by oxidation.

A limit must likewise be placed on the free sulphur dioxid. An examination of a large number of sauternes has shown that the amount of free sulphur dioxid which they contain is needlessly high; in some cases this amount has exceeded 200 milligrams per liter, and about 20 per cent of all of the wines examined exceeded the

limit set by this decision. If the amount of free sulphur dioxid in wines is placed at 70 milligrams per liter it is certain that the wines prepared for consumption can be produced in a sound condition, not only well within the maximum set for the free sulphur dioxid but for the total as well. It is absolutely necessary to restrict in some manner the sulphur dioxid in cases in which it is used under conditions such that it may enter into combination with acetaldehyde, sugars, etc., present in food products, and it is believed that under the restrictions suggested the public will be protected from products unduly sulphured during the period which must elapse before experimental evidence can be obtained as to whether a total restriction in the use of sulphur dioxid under all the conditions mentioned is necessary on account of the toxic properties possessed by sulphur dioxid in the combined form.

III. NO PROSECUTION FOR USE OF BENZOATE OF SODA IN LIMITED QUANTITIES, SEASON 1907.

The decision submitted provides that no prosecutions will be based on the manufacture, sale, or transportation of foods and food products manufactured or packed during the season of 1907 which contain sodium benzoate in quantities not to exceed one-tenth of 1 per cent, or benzoic acid equivalent thereto, provided that sodium benzoate or benzoic acid has hitherto been generally used in such foods and food products. In the opinion of the Board this ruling is a proper one, for the following reasons:

There is a difference of opinion among experts as to the harmfulness of sodium benzoate or benzoic acid. Some manufacturers of food and food products have used this preservative in the honest belief that it is harmless. In the opinion of the Board it is harmful, and its use should be prohibited. However, the pack of 1907 is now under way, some of it is completed, and sodium benzoate has been used extensively. By another year the manufacturers of these food products will have had ample time to adjust manufacturing conditions in such a manner that the use of sodium benzoate will be unnecessary. The prohibition of the use of sodium benzoate at this time would, it is thought, work a hardship upon the manufacturers of food products out of all proportion to the benefit which would be derived by the consumers. The use of sodium benzoate for the time being in limited quantities, which are to be plainly stated upon the label, seems to be the fair solution both for the consumer and for the manufacturer.

IV. PRESENCE OF PRESERVATIVES TO BE SHOWN ON LABEL AND NO GUARANTY TO BE SHOWN.

The decision provides that the label of each package of preserved foods, or of foods containing benzoate of soda or benzoic acid, shall

bear a statement that the food is preserved with sulphur dioxid or with sodium benzoate, or benzoic acid, as the case may be, and the label must not bear a serial number assigned to any guaranty filed with the Department of Agriculture or any statement that the article is guaranteed to conform to the food and drugs act.

The necessity for these requirements is obvious. Where preservatives are used the labels should inform the consumers of that fact, and it is the opinion of the Board that the preserved food does not comply with the law and that it is unfair to the consumer to allow a statement to be made upon the label that the preserved food is guaranteed under the food and drugs act, for the consumer may interpret this statement as a guaranty that the food is pure.

V. LIST OF DYES PERMITTED PENDING FURTHER INVESTIGATION.

The following list of dyes has been recommended in the decision for use in foods and foodstuffs, pending further investigation and announcement of its results:

Red shades:

107. Amranth.

56. Ponceau 3 R.

517. Erythrosin.

Orange shades:

85. Orange 1.

Yellow shades:

4. Naphthol yellow S.

Green shades:

435. Light green S. F. yellowish.

Blue shades:

692. Indigo disulfo acid.

The decision further states that these coal-tar dyes must be made specifically for use in foods and bear a guarantee from the manufacturer that they are free from subsidiary products and represent the actual compound whose name they bear.

The following statement is necessary in order to illustrate the principles guiding the Department of Agriculture in framing this portion of the decision:

An extended study of the large number of so-called coal-tar dyes which are now in use for the coloring of foods and foodstuffs has been necessary to arrive at a conclusion concerning the restriction, if any, which may be placed on their use, and the Department acknowledges the very efficient aid rendered during the course of this study by Dr. Bernhard C. Hesse, of New York City. Doctor Hesse has had an extended experience in this subject through his long association with the leading dyestuff manufacturers in Germany. Since severing his connection with them he has given his time largely to expert work along this line.

The literature on the subject is very unsatisfactory as to what coaltar products are used, and is not to be depended upon, because of the equivocal nature of the terminology employed. It is impossible to reduce this terminology to an unequivocal and definite basis for the great majority of such coal-tar colors.

It was impracticable to go to all those in the United States who use coal-tar dyes in food products and obtain specimens of the coal-tar colors so used. This is true not only because of the large number of such users and their wide geographical distribution, but also because of the reluctance which would undoubtedly be encountered among many such users to disclose the nature of the products employed by them.

The sources of coal-tar materials are limited in number, however. By reference to the book entitled "A Systematic Survey of the Organic Coloring Matters," by Arthur G. Green, published in 1904, on pages 9 and 10 thereof, it will be seen that there are 37 different concerns in the world engaged in the manufacture of coal-tar materials.

Therefore, a canvass of these sources for such coal-tar coloring matters as, in their judgment, or in their business practice, they regard as proper for use in food products, seemed the best mode of obtaining a knowledge of the field of the coal-tar colors here in question.

Communication was had, therefore, with 13 manufacturers of coaltar colors in an endeavor to obtain from them a list of such coaltar colors as, in their judgment or business practice, were deemed suitable for use in food products. When this cooperation was established, request was also made for information as to the composition of the coal-tar samples submitted, and in order to avoid confusion samples were to be identified by reference to the "Systematic Survey of the Organic Coloring Matters," by Green, in which each coal-tar color has its own number. This information is necessary to reduce the terminology to a common and unequivocal basis. The thirteen manufacturers, or their accredited agents, with whom communication was held probably represent from 85 to 90 per cent of the total dyestuff output of the world.

In order to make provision for the 24 makers on the list in the Green tables, and not included in the 13 makers consulted, a request for samples was made from two New York City houses, who themselves import coal-tar colors from sources other than the above, for use in food products. Their products must fairly represent any output not represented by the 13 makers above mentioned.

The question of the choice of dyes for the coloring of foodstuffs has been decided on the basis of those dyes which have been submitted by the manufacturers or their accredited agents, but it was impossible to consider any dyes when the manufacturer or the

accredited selling agent was unwilling to state unequivocally what the dyes submitted were, so that they could be identified chemically.

When those interested in placing dyestuffs on the market for the coloring of food have shown unwillingness to give information of this kind as to what they sell, and by thus selling, recommend, the burden of proof as to the harmlessness of such dyes lies with them, and until such proofs are adduced, the use of such dyes should be inhibited.

With this knowledge of the specific nature of the dyes recommended, the Department has made a study of those concerning which there has been the greatest unanimity of opinion among the manufacturers or their agents as to their fitness; and in the cases where such dyes have been studied as to their physiological action, and the reports have been favorable, they have been included in the tentative list proposed in the food inspection decision herewith.

This tentative list of dyes includes a wide range of colors sufficient for all legitimate purposes. Among them are none which are patented, so that their manufacture is open to all interested in the dye industry.

One point must be particularly emphasized regarding the use of these dyes, namely, the need for the manufacturer's guarantee of purity. It is the manufacturer above all who knows the exact nature of his dyestuffs, and if he is willing to sell his colors for use in foodstuffs he should be willing to guarantee that the dyes really are what they are represented to be, that they are not mixtures, and that they do not contain harmful impurities.

In order further to minimize the possibility of harmful impurities existing in these dyes, it has been thought necessary to require a further examination by competent experts, a certificate from whom is necessary, stating that the dyes in question are what they are represented to be.

VI. ENTRY OF VEGETABLES GREENED WITH COPPER SALTS.

The decision states:

The question of the entry into the United States of vegetables greened with copper salts has not been finally determined. Pending the determination and decision of this matter by the Secretary of Agriculture all vegetables greened with copper salts which do not contain an excessive amount of copper will be admitted to entry if the label bears a statement that sulphate of copper or other copper salts have been used.

The greening of vegetables with copper sulphate is practiced to a large extent in some foreign countries, and vegetables so treated are imported into the United States. Before the passage of the food and drugs act the Department of Agriculture, under authority of the yearly appropriation acts, controlled the import of foods. It has been the practice to admit vegetables which did not contain an

excessive quantity of copper salts if the artificial color were plainly declared on the label. It is the opinion of the Board that copper sulphate is injurious and should be prohibited eventually, but it would work a great injury to American importers to put this ruling into effect at once. It is believed that the use of copper sulphate or of other salts of copper in restricted quantities for greening vegetables should be permitted for the pack of the present year, but for no longer.

VII. NO PROSECUTION FOR GOODS PACKED PRIOR TO THE DATE OF THE DECISION.

The decision provides that no prosecution will be based upon the sale of foods and food products manufactured or packed in the United States prior to the issuing of this decision, where the composition of such foods and food products is at variance with the requirements of this decision, if the nature of the variation be plainly stated on the label, and that in every case the burden of proof will be on the manufacturer to show that the goods were manufactured or packed prior to the date of the decision. Obviously, it would be unfair to base a prosecution upon the use, prior to the date of the decision, of preservatives prohibited by the decision. Furthermore, unless assurances be given that no prosecutions will be had for the sale of this class of goods a very large quantity of food will be rendered unsalable, and the injury which will be inflicted upon the country will be out of all proportion to the benefit which is expected to be derived.

Frederick L. Dunlap,
Geo. P. McCabe,
Board of Food and Drug Inspection.



United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 77.

CERTIFICATE AND CONTROL OF DYES PERMISSIBLE FOR USE IN COLORING FOODS AND FOODSTUFFS.

The Department of Agriculture is in receipt of a large number of inquiries concerning the interpretation to be put on that portion of F. I. D. 76 which refers to coal-tar dyes not inhibited for use in coloring foods and foodstuffs.

The term "manufacturer," as used in F. I. D. 76 and in the present decision, applies to a person or company responsible for the purification of the crude or raw dye for the purpose of placing it in a condition fit for use in foods and foodstuffs; or to the accredited selling agent in the United States of such person or company. Such accredited agent must file, on behalf of his foreign principal, if the latter does not file it, a manufacturer's certificate, and it will be considered that the responsibility for such certificate will rest upon the accredited agent and not upon the foreign principal.

For each permitted dye two certificates must be filed by the manufacturer, the first to be known as the "Foundation certificate," the second known as the "Manufacturer's certificate." It is suggested that the foundation certificate be in the following form:

FOUNDATION CERTIFICATE.

I,	, the unde	rsigned, resi	ding at		,
in the city of	· 	county of _		(Street ac	ddress.) , State of
amined and tested	for	concern.)		(City.)	, county
of	, State of		, t	he material	known as
in A. G. Green's Ed	ition (1904) of the	e Schultz-Jul	ius "Sys	tematic Sur	vey of the
Organic Coloring M	atters," and of wh	nich a one (1) pound s	sample marl	ked
is herewith submitt	ted. I have found	I the said ma	iterial to	consist of	that color-
82515°—No. 77	·—11				

ing matter only, to be free from harmful constituents, and not to contain any contamination due to imperfect or incomplete manufacture.

(Here insert a complete statement of all the tests applied to determine:

- A. Identity.
- B. Absence of
 - a. Mineral or metallic poisons.
 - b. Harmful organic constituents.
 - c. Contamination due to improper or incomplete manufacture.

Special attention should be given to setting forth fully the quantities or volume of each material and reagent employed, its strength or concentration, temperature, duration of treatment, limits of delicacy of tests employed, and any other information that is necessary to enable others to repeat accurately and correctly all the work herein referred to and thus arrive at identical results. For each test performed, state what conclusions are drawn from it and why.)

(Signature of chemist making the examination.)

CERTIFICATION.

For the manufacturer's certificate the following form is suggested:

MANUFACTURER'S CERTIFICATE.

I,, the undersigned, a resident of the United States,
loing business at, in the city of,
(Street address.)
county of, State of, under the style
of, do hereby certify under oath that I am the manu-
(Full name of concern.)
acturer of the material known as, which corresponds to
he coloring matter numbered in the 1904 Green Edition of the Schultz-
Julius Tables, of which the accompanying foundation certificate, signed by
, the examining chemist, is the report of an analysis of a
air, average sample drawn from a total batch of pounds.

(Signature of manufacturer.)

CERTIFICATION.

The foundation certificate must be filed with the Secretary of Agriculture at the time the first request is made of the Secretary to use any or all of the permitted dyes for coloring foods and foodstuffs.

The following form of supplemental certificate is suggested in those cases where a manufacturer desires to apply for permission to place on the market a new batch of a coal-tar dye, which dye has already had a foundation certificate and a manufacturer's certificate filed for it.

SUPPLEMENTAL CERTIFICATE.

I,	, the undersigned, residi	ing at,
•		(Street address.)
in the city of	, county of $_{-}$, State of
,	hereby certify under oatl	h that I have personally ex-
amined and tested for	, of	county of
	(Full name of concern.)	(City.) , the material known as
,	State of	, the material known as
,	which corresponds to th	e coloring matter numbered
in A. G. Green	's Edition (1904) of the Sc	chultz-Julius "Systematic Sur-

vey of the Organic Coloring Matters," of which a one (1) pound sample marked ____ is herewith submitted, and I have found it to consist of that coloring matter only and to be free from harmful constituents and not to contain any contamination due to imperfect or incomplete manufacture.

This examination was conducted in strict accordance with the detailed scheme of examination fully set forth in the foundation certificate filed _______(Date.)

(Date.)

(Signature of chemist.)

CERTIFICATION.

This supplemental certificate should likewise be accompanied by the same type of manufacturer's certificate as is described above.

When the certificates filed with the Department of Agriculture are found to be satisfactory, a "lot number" will be assigned to each batch, which lot number shall apply to that batch alone and to no other batch of the same color.

According to F. I. D. 76, the seven permitted coal-tar dyes therein named, made specifically for use in foods, may be used in foods provided they bear a guaranty from the manufacturer that they are free from subsidiary products and represent the actual substance the name of which they bear. The guaranty herein considered shall be applied as follows:

Each package sold by the manufacturer should bear the legend "Part of Certified Lot Number ____." The foundation certificate, as well as the corresponding supplemental certificate, does not apply to any certified dye beyond the package originally prepared by the one establishing this certificate. If such a package be broken and the dye therein contained be repacked, the repacked dye, except as hereinafter provided, becomes an uncertified dye, and as such is inhibited.

There is no objection on the part of the Department of Agriculture to mixtures made from these permitted and certified dyes, by those who have filed certificates with the Department, but one (1) pound samples of such mixtures, and the trade name under which each mixture is sold, must be sent to the Secretary of Agriculture, and no such trade name or keyed modification thereof may be used for any other mixture.

The exact formula—that is, the true names as well as the numbers assigned to the original package and the proportions of the ingredients used—should be deposited with the Secretary of Agriculture, but such formula need not appear on the label; in lieu of which may appear the legend "Made from Certified Lots Number ____ and Number ____," etc. If the packages of these mixtures bearing this legend be broken and repacked, the mixture becomes, except as hereinafter provided, an uncertified one, and hence its use is inhibited; that is, the guaranty of the manufacturer shall extend only to the packages prepared by himself and only for so long as they remain in

the unbroken form. Whenever new lots of previously established mixtures are made, making use of new certified straight dyes therein, thus necessitating a change in the label, 1-pound samples of the new mixtures should be sent to the Secretary of Agriculture.

The term "competent experts" as used in F. I. D. 76 applies to those who, by reason of their training and experience, are able to examine coal-tar coloring matter to ascertain its identity and to determine the absence of foreign matter not properly belonging to the product, which, if present, renders the substance unfit for use in food products.

The term "batch" as used above is such a quantity of the product as has undergone the same treatment at the same time and the same place as a unit and not otherwise—that is, the lot for one purification.

Those to whom certification is given with respect to their dyes and a lot number assigned should control the sale of such batches so that they may account to the Department of Agriculture by inspection of their books or otherwise for the destination and disposal of each batch.

Those using these certified dyes in the preparation of foods and foodstuffs must be in a position to substantiate the fact that the dyes so used were of a properly certified character.

There is no guaranty on the part of the Department of Agriculture that because the tests described in any foundation certificate have once been accepted, the permanency of such acceptance is assured.

In those cases where a package of a straight dye or a mixture of such dyes, bearing proper labels to the effect that they are of a certified lot or lots, is broken and repacked in still smaller lots, or treated with solvents, mixed, etc., the person or company so treating these dyes must stand sponsor for their integrity. This may be accomplished by submitting a statement to the Secretary of Agriculture as follows:

SECONDARY CERTIFICATE.

I,	, residing at	, do hereby certify
	that I have repacked lbs purchased from	Full address.) of certified lot (or lots) following fashion:
<u></u>		
	(Full description of what has been d	
		(Name.)

CERTIFICATION.

On presentation of this certified form, properly filled out, to the Secretary of Agriculture, a lot number will be assigned, which number should be used in labeling according to the methods already de-

scribed. If, for example, a portion of lot number "127" is repacked in smaller packages, the lot number "127 A" will be assigned to this repacked dye, to enable the Department to follow this into consumption if necessary and still trace it back to the person by whom the dye was originally certified.

> H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., September 16, 1907.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
 - [40. Filing Guaranty.

- F. I. D. 41. Approval of Labels.
 42. Mixing Flours.
 43. Relabeling of Goods on Hand.
- F. I. D. \biggle{44.} Scope and Purpose of Food Inspection Decisions. \biggle{45.} Blended Whiskies.
- F. I. D. \begin{cases} \{46\, \text{ as amended.} & \text{Fictitious Firm Names.} \\ 47\. & \text{Flavoring Extracts.} \\ 48\. & \text{Substances Used in the Preparation of Foods.} \end{cases}

- 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
- 50. Imitation Coffee.
- F. I. D. So. Initiation Confec. 51. Coloring of Butter and Cheese. 52. Form of Label.

- 53. Formula on the Label of Drugs.
- (54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Prepa-
- 56. Names to be Employed in Declaring the Amount of the ingredients

F. I. D. as Required by the Law.

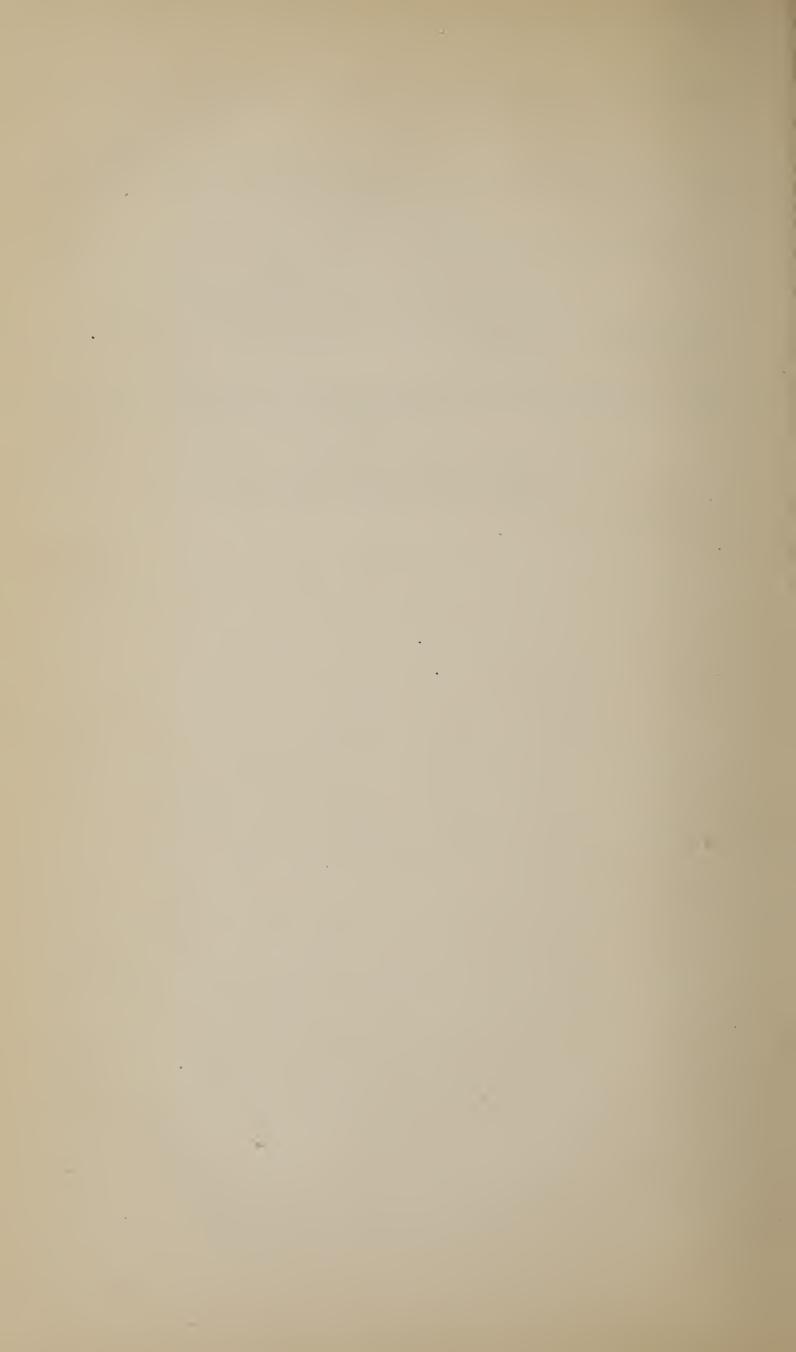
- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicions' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.

- F. I. D. 60. Minor Border Importations.
 61. Cocoa Butter Substitutes.
 62. Guaranty on Imported Products.
 63. Use of the Word "Compound" in Names of Drug Products.
 - 64. Labeling of Sardines.

- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- 66. The Use of Sugar in Canned Foods.
 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
 - 70. Abuse of Guaranty for Advertising Purposes.
 71. Labeling of Succotash.
 72. Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.

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United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISIONS 78-79.

78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

(F. I. D. 78.)

THE USE OF LABELS AFTER OCTOBER 1, 1907.

When the rules and regulations for the enforcement of the food and drugs act were issued by the three Secretaries on October 16, 1906, one of the regulations, 17 (i), provided that any labels printed and on hand that day which did not contain a misstatement as to the character of contents, but which were not in strict compliance with other requirements of the Regulations, might be issued without fear of prosecution until October 1, 1907.

Recently the National Wholesale Grocers' Association, and individual grocers, wholesalers, and jobbers throughout the United States, requested the Board of Food and Drug Inspection to recommend to the three Secretaries the extension of the privilege until October 1, 1908.

After a careful consideration of the matter the Board has unanimously decided to refuse to recommend such an extension. It is the opinion of the members of the Board that sufficient time has elapsed for manufacturers, jobbers, and wholesalers to adjust their business affairs to the terms of the law and of the regulations.

It is apparent, from the letters received by the Board, that the general impression exists that the use of corrected labels will not be permitted after October 1, 1907. This is an erroneous impression

and is evidently gathered from the wording of Regulation 17 (i), and more particularly from Food Inspection Decision 43, which stated that on and after October 1, 1907, the labels must be originally properly printed. This statement was advisory and conveyed a warning that a further extension of the privilege need not be asked. It is desirable, of course, both from the standpoint of the Government officials who have charge of the enforcement of the law and from the view-point of the manufacturers, that the labels should be correct as originally printed.

Any person has a right to use a label which is not false or deceptive in any particular, even though this result is arrived at through the use of stickers, erasures, or other suitable means. Attention, however, is directed to the fact that misleading and deceptive statements must be obliterated. In other words, it is not sufficient, in the opinion of the Board, that a deceptive statement should be allowed to remain on one portion of the label with a corrective statement upon another portion of the label. This principle of correction will be waived until further notice in case of decorated sardine tins which were printed and manufactured prior to January 1, 1907. In these cases the corrections may all be made in one label attached securely to one side of the package. Each invoice should be accompanied by a certificate from the exporter, showing the date of manufacture of the tins.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved: '

James Wilson, Secretary of Agriculture.

Washington, D. C., October 8, 1907.

(F. I. D. 79.)

COLLECTION OF SAMPLES.

(Amendment to Regulation 3 of the Rules and Regulations for the Enforcement of the Food and Drugs Act.)

The Board of Food and Drug Inspection recommends that Regulation 3 of the Rules and Regulations for the Enforcement of the Food and Drugs Act be amended to read as follows, the amendment to become and be effective on and after November 1, 1907.

Regulation 3. Collection of Samples.

(Section 4.)

Samples of unbroken packages shall be collected only by authorized agents of the Department of Agriculture, or by the health, food, or drug officer of any State, Territory, or the District of Columbia, when commissioned by the Secretary of Agriculture for this purpose.

Samples may be purchased in the open market, and, if in bulk, the marks, brands, or tags upon the package, carton, container, wrapper, or accompanying printed or written matter shall be noted. The collector shall also note the names of the vendor and agent through whom the sale was actually made, together with the date of the purchase. The collectors shall purchase representative samples.

A sample taken from bulk goods shall be divided into three parts,

and each shall be labeled with the identifying marks.

If a package be less than 4 pounds, or in volume less than 2 quarts, three packages shall be purchased, when practicable, and the marks and tags upon each noted as above. When three samples are purchased, one sample shall be delivered to the Bureau of Chemistry or to such chemist or examiner as may be designated by the Secretary of Agriculture; the second and third samples shall be held under seal by the Secretary of Agriculture, who, upon request, shall deliver one of such samples to the party from whom purchased or to the party guaranteeing such merchandise.

When it is impracticable to collect three samples, or to divide the sample or samples, the order of delivery outlined above shall obtain, and in case there is a second sample the Secretary of Agriculture may, at his discretion, deliver such sample to parties interested.

All samples shall be sealed by the collector with a seal provided for the purpose.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

GEO. B. CORTELYOU,

Secretary of the Treasury.

OSCAR STRAUS,

Secretary of Commerce and Labor.

Washington, D. C., October 8, 1907.

LIST OF FOOD INSPECTION DECISIONS.

F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.

(40. Filing Guaranty.

F. I. D. 41. Approval of Labels. 42. Mixing Flours.

- 43. Relabeling of Goods on Hand.
- F. I. D. 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.
- F. I. D. 46, as amended, Fictitious Firm Names. 47. Flavoring Extracts.

- 48. Substances Used in the Preparation of Foods.
- 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee. F. I. D.

51. Coloring of Butter and Cheese.

52. Form of Label.

- 53. Formula on the Label of Drugs.
- (54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients

F. I. D.

- as Required by the Law.

 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.
- 60. Minor Border Importations.
- 61. Cocoa Butter Substitutes.
- F. I. D. 62. Guaranty on Imported Products. 63. Use of the Word "Compound" in Names of Drug Products. 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
 - 66. The Use of Sugar in Canned Foods.
- 67. Polishing and Coating Rice.
- 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
 - (70. Abuse of Guaranty for Advertising Purposes.
- F. I. D. 71. Labeling of Succotash.
 - 72. Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. L. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.

United States Department of Agriculture,

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISIONS 80-81.

80. Glazed Coffee. 81. Labeling of Caramels.

(F. I. D. 80.)

GLAZED COFFEE.

There have been frequent inquiries made regarding the application of the food and drugs act to the practice of glazing coffee. The following is a type of the communications of this nature:

It has been the custom with many roasters of coffee to use a finish, made out of supposedly harmless ingredients, on their coffees, especially the lower grades, the main object being to lessen the natural loss in weight during the process of roasting, and thus reduce the cost.

We used a finish, ourselves, made up of lemon juice, flaxseed, gelatin, bicarbonate of soda, and lime water, until January 1, 1907, when we ceased, as we were uncertain as to its lawfulness under the pure food and drugs act which went into effect that day. If it is against the law, we would ask that the pure food commission prepare a ruling on coffees, such as has been done on rice, and have this ruling take effect as soon as possible, as manufacturers who are adhering to this method of roasting are enabled to undersell those who are using the natural roast, thereby placing them at a decided disadvantage.

Coffee is coated for one or all of the following reasons:

- 1. To restore, at least in part, the loss of weight incident to roasting.
- 2. To conceal damage or inferiority.
- 3. To prevent the depreciation of the roasted coffee due to the escape of the aromatic constituents.
- 4. To prevent the absorption of water which renders the roasted grains tough.

It would appear that the questions involved in this practice are similar in many respects to those involved in the polishing and coat-

ing of rice, which is discussed in F. I. D. 67. As in the case of coating rice, it is the opinion of the department that no coating of any kind can be applied to the coffee "if the product be mixed, colored, powdered, coated, or stained in any manner whereby damage or inferiority is concealed." In each case, whether or not such a result be secured is a question of fact to be decided by the evidence.

It is held by the department that coffee treated in the manner indicated with lemon juice, flaxseed, gelatin, bicarbonate of soda, and lime water should be labeled in all cases with the name of the extraneous substances, as,

COATED WITH LEMON JUICE, FLAXSEED, GELATIN, BICARBONATE OF SODA, AND LIME WATER.

In such declarations all of the substances used for coating should be mentioned. Any coloring matter or other substances that may be employed to change the tint of the coffee should be declared on the label

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., October 31, 1907.

(**F. I. D.** 81.)

LABELING OF CARAMELS.

The department is in receipt of the following inquiries from manufacturers of confectionery:

- 1. Milk caramel.—This piece contains no milk, but is composed principally of sugar and glucose, and we would like very much to know if milk were added to this formula whether we could still continue to call it "Milk Caramel."
- 2. Peaches and cream caramel.—This piece is made up principally of sugar and glucose and milk, and flavored with peach flavor. As there are 50 pounds of milk to a batch of 116 pounds, would this be considered as one of the principal ingredients?
- 3. Whipped cream caramet.—This piece does not contain any cream or milk, but is made up principally of sugar and glucose. The batch is, however, whipped, and if we should add milk to it, would it be misbranding to continue to call it "Whipped Cream Caramel?"

Section 8 of the food and drugs act of June 30, 1906, provides that any article of food is misbranded (1) if it be an imitation of or offered for sale under the distinctive name of another article; (2) if it be

labeled so as to deceive or mislead the purchaser; (3) if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substance contained therein, which statement, design, or device, shall be false or misleading in any particular.

These portions of section 8 bear directly on the above as concerning the labeling of different types of caramels. Caramel No. 1 would be distinctly a case of misbranding, since it contains no milk.

In regard to caramel No. 2, it is evident that if milk is used in that product, it is false and misleading to call it "Cream Caramel." It is thought that this product would be properly labeled as "Peach-flavored Caramel" or "Caramel, Peach Flavor," if the peach flavor is not produced by the use of an imitation product. If an imitation peach flavor is used the caramel could be properly branded only as "Imitation Peach-Flavored Caramel" or, preferably, "Caramel, Imitation Peach Flavor." The question as to whether the 50 pounds of milk used to a batch of 116 pounds forms one of the principal ingredients would have to be determined by the proportion of the ingredient found in the finished article. This question, however, is immaterial in considering the question as to whether the name "Cream" can be applied to the caramel.

To caramel No. 3 the above statements apply equally well. Since it does not contain any cream, the label "Whipped Cream Caramel" would be false and misleading. Even if milk were added to the batch and the whole were whipped, the product would not be entitled to bear the label "Whipped "Cream Caramel."

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., October 31, 1907.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. 40. Filing Guaranty. 41. Approval of Labels. 42. Mixing Flours. 43. Relabeling of Goods on Hand.
- F. I. D. 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.
- F. I. D. 46. Fictitious Firm Names; also F. I. D. 46, as amended. 74. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.
- F. I. D. 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906. 50. Imitation Coffee. 51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.

- F. I. D. 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products. 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations. 56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law. 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce. 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes. 59. National Formulary Appendix.
- F. I. D. 60. Minor Border Importations. 61. Cocoa Butter Substitutes. 62. Guaranty on Imported Products. 63. Use of the Word "Compound" in Names of Drug Products. 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- F. I. D. 66. The Use of Sugar in Canned Foods. 67. Polishing and Coating Rice. 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
- F. I. D. 70. Abuse of Guaranty for Advertising Purposes. 71. Labeling of Succotash. 72. Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- F. I. D. 78. The Use of Labels after October 1, 1907. 79. Collection of Samples.

United States Department of Agriculture, office of the secretary,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 82.

LABELING OF COFFEE PRODUCED IN THE DUTCH EAST INDIES.

There seems to be in the trade much uncertainty respecting the requirements of the Department of Agriculture as to the labeling of coffee produced in the Dutch East Indies. This question has been under advisement by the Department for some time, and, with the cooperation of the Department of State, important information has been secured.

The Department of State was asked to communicate with the Government of the Netherlands and ascertain to what extent in the opinion of that Government the term "Java" should be used in harmony with the provisions of the law as applicable to coffees produced in the Dutch East Indies.

A communication has been received through the Department of State from the American Minister at the Hague, who has consulted the Netherlands Government on this subject. In this communication the American Minister states—

The term "Java Coffee" has been abused for many years, hence it arises that of both roasted and unroasted coffee, perchance ten times as much coffee is sold to the consumer, under the name of "Java Coffee," as is grown in Java.

In conformance with the provisions of the "pure food act," all coffee coming from the island of Java might be called "Java Coffee," that from the Padang districts "Padang Coffee," that from Celebes "Celebes Coffee," and all other sorts from the Netherlands Indies "Dutch East Indies Coffee."

In the Netherlands what is known as "Java Coffee" is only the *Coffea arabica* produced in Java, so that the *Coffea liberica* coming from that island under the name of "Java Coffee" falls as little under that term as all the coffee from the rest of the islands of the Indian Archipelago.

The Department is of the opinion that the suggestions which are incorporated in this quotation from the American Minister at the Hague indicate a proper method of labeling coffee coming from the Dutch East Indies.

Coffee grown on the island of Sumatra would also be properly labeled if called "Sumatra Coffee," or, if desired, the label may state specifically and correctly the particular location in which the coffee in question was really grown.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Approved:

Board of Food and Drug Inspection.

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., November 11, 1907.

LIST OF FOOD INSPECTION DECISIONS.

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- F. I. D. { 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.

46, as amended. Fictitious Firm Names.

47. Flavoring Extracts. F. I. D.

48. Substances Used in the Preparation of Foods.

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee.

F. I. D. 51. Coloring of Butter and Cheese. 52. Form of Label.

53. Formula on the Label of Drugs.

54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.

55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients

as Required by the Law. F. I. D.

- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.

F. I. D.

60. Minor Border Importations.
61. Cocoa Butter Substitutes.
62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.
64. Labeling of Sardines.

F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.

66. The Use of Sugar in Canned Foods.

- 67. Polishing and Coating Rice. 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- 69. Inspection of Food and Drugs and Identification of Inspectors.

70. Abuse of Guaranty for Advertising Purposes. 71. Labeling of Succotash.

- 72. Use of Guaranties and Serial Numbers Thereof.
- 73. Interstate Transportation of Imported Meats and Meat-Food F. I. D. Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

F. I. D. \{ 80. Glazed Coffee. 81. Labeling of Caramels.

United States Department of Agriculture, office of the secretary.

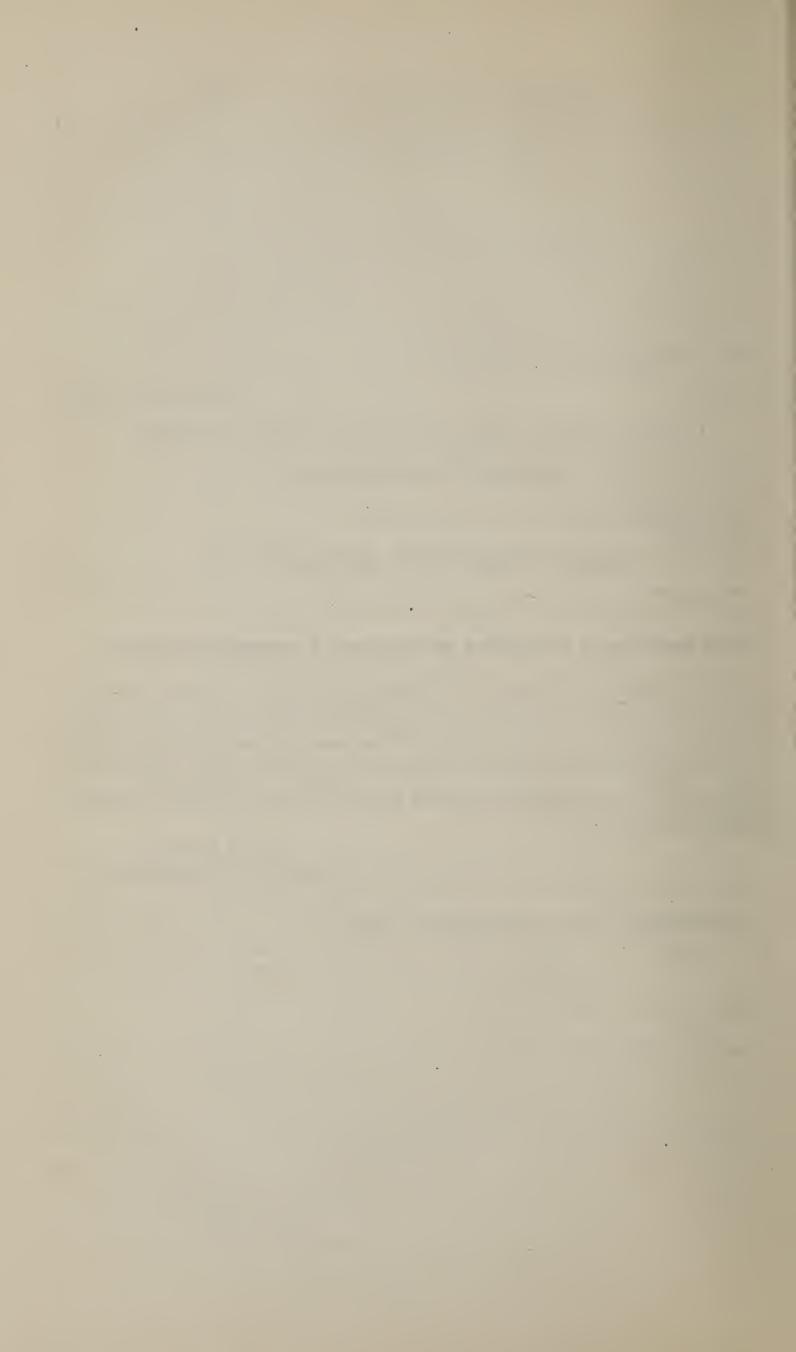
FOOD INSPECTION DECISION 83.

THE ISSUE OF A GUARANTY BASED UPON A FORMER GUARANTY.

Food Inspection Decision 83, giving the opinion of the Attorney-General on certain phases of the use of the guaranty under section 9 of the food and drugs act, June 30, 1906, is promulgated by the Department of Agriculture for the guidance of those who have occasion to make use of such guaranties during the carrying on of their ordinary business relations.

James Wilson, Secretary of Agriculture.

Washington, D. C., *November 22*, 1907.



OPINION OF THE ATTORNEY-GENERAL.

NOVEMBER 11, 1907.

The Honorable The Secretary of Agriculture:

SIR: I have the honor to acknowledge the receipt of your letter of September 10, in which you request my opinion upon a question which has arisen in your Department in the administration of the food and drugs act of June 30, 1906, in a class of cases of which the following is a type:

An examination having been made in the Bureau of Chemistry, in accordance with section 4 of the act, of a sample of food purchased from a retail dealer in the District of Columbia, and the food having been found to be adulterated, the dealer was cited for a hearing, and, having appeared, established as a defense under which he claimed protection a written guaranty, conforming to the requirements of section 9 of the act, from a Maryland wholesaler who had sold him the food and shipped it to him in the District of Columbia in the exact condition in which he sold it here.

The Maryland wholesaler, having been then cited, in turn appeared and established a similar guaranty, under which he also claimed protection, from a Pennsylvania manufacturer who had sold him the food and had shipped it to him in Maryland in the exact condition in which he had, in turn, guaranteed it and shipped it to the retailer in the District of Columbia.

The question upon which my opinion is requested is whether, upon such state of facts, the Maryland wholesaler is amenable to prosecution for violation of the act or is protected by the guaranty from the Pennsylvania manufacturer.

By section 2 of the food and drugs act (34 Stat., 768) it is made a misdemeanor, inter alia, to ship any adulterated or misbranded food or drugs in interstate commerce, or to receive the same in such commerce, and, having so received, to deliver the same to any other person in original, unbroken packages, or to sell the same in the District of Columbia.

Section 9 of the act further provides:

That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

After careful consideration of this act, together with the memoranda

prepared by the members of the Board of Food and Drug Inspection, which you have submitted with your letter, I am of the opinion that the guaranty from the Pennsylvania manufacturer affords complete protection to the Maryland wholesaler and that he is hence not amenable to prosecution under the act on account either of the interstate sale and shipment made by him to the retailer in the District of Columbia or of the guaranty given by him in connection therewith.

1. It is clear that the Maryland wholesaler is protected from prosecution for the interstate sale and shipment made by him, by the explicit provision of section 9, that "no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of the act."

The broad term "dealer" which is used in this section, not being restricted in its meaning by any other provision of the act, includes those who deal at wholesale as well as those who deal at retail. I am of the opinion, therefore, that under the plain language of this provision any dealer, whether a wholesaler or retailer, who would otherwise be amenable to prosecution for dealing in an adulterated or misbranded article in violation of the act, is protected from prosecution on such account by establishing a guaranty in conformity with the requirements of the act, signed by a resident of the United States from whom he purchased such article.

2. A more difficult question, however, arises in reference to the liability of the Maryland wholesaler to prosecution by reason of the guaranty which he gave the District of Columbia retailer in connection with the sale and shipment to him.

It is expressly provided by section 9 of the act that wherever a dealer who would otherwise be subject to prosecution establishes a guaranty from a resident of the United States who sold him the articles, the dealer is thereby protected, and such guarantor "shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act." Construing this section in its entirety, I am of the opinion that its purpose was to create, in addition to the offense of manufacturing and dealing in adulterated and misbranded food and drugs specifically made misdemeanors by sections 1 and 2 of the act, the distinct and substantive offense of guaranteeing, under the food and drugs act, any adulterated or misbranded article—thereby enabling the purchaser to deal with such articles in a manner otherwise forbidden without being amenable to the punishment to which he would otherwise be subject—the offense of giving such false guaranty, however, not to be complete until the purchaser deals with the article thus guaranteed in a manner otherwise punishable by the

act, in which event the guarantor would become subject to the same punishment for giving the false guaranty as that to which the purchaser would otherwise be amenable by reason of his dealing with the article.

Without discussing the scope and effect of this provision, I am of the opinion that whatever this may be, the maker of a false guaranty is just as much protected from any prosecution to which he might be liable on this account by establishing a former guaranty from the person from whom he purchased the article as he is thereby protected from prosecution for dealing with the article in a manner otherwise forbidden by the act; in other words, that the former guaranty is a complete protection against any prosecution under this act.

It is true that section 9 does not specifically state that the first guaranty shall protect the second guarantor, but this result follows from the broad provision that "no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the * * * party * * * from whom he purchases such articles." As a prosecution for the false guaranty would be a prosecution "under the provisions" of the act, and as the dealer's protection under his vendor's guaranty is not limited by the act to prosecutions for dealing in the articles, but includes all prosecutions under its provisions, a former guaranty would in my opinion afford a dealer protection against the punishment to which he might otherwise be amenable for his own false guaranty as well as for selling or shipping the article in violation of the act.

In short, the intention of Congress appears to have been to relieve from liability any person who would otherwise be subject to any prosecution under the act if he establishes a guaranty from the person who sold him the goods, provided such person is a resident of the United States and therefore himself within the reach of prosecution, and to make such original guarantor subject to prosecution in lieu of the subsequent offender, Congress evidently intending to refer back liability in such case, in general, to the original guarantor, who, of course, in the case of goods of domestic production, would usually be the manufacturer, who would know their real character, and, in the case of goods imported from a foreign country, would be the importer, who would assume responsibility therefor, and to make the liability to punishment fall upon such original guarantor so far as possible.

It further appears from the report of the House Committee on Interstate and Foreign Commerce, which reported the food and drugs bill for passage in substantially the form in which it was afterwards enacted, and which, under the doctrine of Holy Trinity Church v. United States, 143 U.S., 457, 464, and United States v. Binns, 194 U.S., 486, 495, may be properly looked to for the purpose of throwing light upon the intent of Congress, that the provision in question was inserted in the bill by the committee and that its general purpose was to protect persons

dealing in the articles subsequent to the manufacturer or importing agent and direct the penalty to the original guarantor as far as possible. The committee in its report said:

As the principal purpose of the bill is to prevent interstate and foreign commerce in adulterated or falsely branded articles of food, drink, and medicine, the committee has inserted in the bill a provision intended to protect all persons dealing in the articles subsequent to the manufacturer or importing agent.

Section 8 of the bill provides that no dealer shall be convicted when he is able to prove a guaranty of conformity with the provisions of the act signed by the manufacturer or the party from whom he purchased. The section requires that the guarantor shall reside within the United States and that the guaranty shall contain his full name and address.

In other sections of the bill there are provisions for collecting samples or specimens and the examination of such in order to determine whether they are adulterated or misbranded, and the bill provides that any party from whom a sample was obtained shall be given an opportunity to be heard before the Secretary of Agriculture shall certify to the United States district attorney the results of an examination of the article as the basis for prosecution; so that if samples of goods shall be taken from a retail or wholesale dealer who has received a guaranty of conformity with the provisions of the act from the person who sold to him, he will be relieved from prosecution, and any penalty which may attach under the act will be directed to the original guarantor.

These carefully prepared provisions of the bill will prevent any dealer being put to the expense of a prosecution when he takes the precaution to protect himself by requiring a guaranty. (Ho. Rep. 2118, 59th Cong., 1st sess., p. 3.)

And again:

The prosecutions which will be commenced by the national authorities will be mainly directed against the manufacturers of food products; or, if it be impossible to find the manufacturer, against the jobbers and wholesale dealers. (Ho. Rep. 2118, supra, p. 9.)

Section 8 of the bill which was thus inserted by the committee read as follows:

That no dealer shall be convicted under the provisions of this act when he is able to prove a guaranty of conformity with the provisions of this act in form approved by the rules and regulations herein provided for, signed by the manufacturer or the party or parties from whom he purchased said articles: *Provided*, That said guarantor resides within the United States. Said guaranty shall contain the full name and address of the guarantor making the sale to the dealer, and said guarantor shall be amenable to the prosecutions, fines, and other penalties which would otherwise attach in due course to the dealer under the provisions of this act. (Ho. Rep. 2118, *supra*, p. 11.)

It will be seen that the provision thus inserted and commented upon by the committee is substantially the same, so far as the present question is concerned, as section 9 of the bill as afterwards enacted, and it is made clear by this report that it was the intent of the committee, at least, in inserting this provision to entirely relieve from prosecution any retail or wholesale dealer who had received a guaranty from the person from whom he purchased, and, as stated by the committee, to "prevent any dealer from being put to the expense of a prosecution when he takes the precaution to protect himself by requiring a guaranty."

Any other construction of this act would work great hardship upon an innocent intermediary who, relying upon the guaranty which he receives from the original manufacturer of an article, sells it in interstate trade and guarantees it in his turn. And if the original guaranty does not fully protect him in such case, it would become exceedingly hazardous to sell and guarantee such article, even though guaranteed by the manufacturer, without first making, on his own account, a detailed investigation, chemical or otherwise, to ascertain whether it is in fact adulterated or misbranded. Manifestly, however, such a requirement would in many cases seriously impede and obstruct interstate trade.

It is stated in Doctor Dunlap's memorandum that, from the conditions that the Board of Food and Drug Inspection has found to exist throughout the whole business community, dealers engaged in interstate trade are insisting on a guaranty from the seller and purchasing only under such guaranty; that in order to do an interstate business to-day a dealer must give a guaranty with the goods he sells, whether he be the actual manufacturer or not; and that if the dealer can not rely upon the manufacturer's guaranty as a protection, it must have the effect of preventing interstate sales on the part of small concerns, and even of large concerns who probably would not care to incur the added expense and trouble, in many cases prohibitive, of having the goods carefully analyzed in order to be fully acquainted with their character.

There is, however, a presumption against a construction of a statute which "would cause grave public injury or even inconvenience" (Bird v. United States, 187 U. S., 118, 124). And it was said by Lord Coke, in language which was quoted by Abbott, C. J., in Margate Pier Co. v. Hannam, 3 B and Ald., 266, 270, and cited with approval in Holy Trinity Church v. United States, 143 U. S, 457, 459, that: "Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endamaged."

The construction which I have given the act is furthermore supported by the view expressed in Greeley's Food and Drugs Act, sec. 65, p. 4, that:

A wholesaler or jobber who purchases food or drug products from the producer or from anyone else may safely guarantee the goods so purchased to his consumers, provided he has from the producer or other person from whom he purchased the goods a guaranty covering them.

For these reasons, I am of the opinion that in the case stated the Maryland wholesaler is not amenable to prosecution under the act but is completely protected by his guaranty from the Pennsylvania manufacturer.

3. I should add, however, that the fact that both the District of

Columbia retailer and the Maryland wholesaler are protected from prosecution by the guaranties which they have established from their respective vendors, does not, in my opinion, exempt the adulterated food from confiscation under section 10 of the act, which provides, inter alia, that any adulterated or misbranded food or drug which is being transported in interstate commerce for sale, or, having been transported, remains unloaded, unsold, or in original, unbroken packages, or is sold or offered for sale in the District of Columbia, may be proceeded against in the district where found "and seized for confiscation by a process of libel for condemnation." The provision of section 9 that no dealer shall be prosecuted when he establishes a guaranty from his vendor merely affords protection, in my opinion, against the criminal prosecution, fines, and other penalties to which the dealer would otherwise be personally amenable, and does not in any way affect the liability of the merchandise to confiscation under the provisions of section 10.

Respectfully,

CHARLES J. BONAPARTE,

Attorney-General.

A5----8

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISIONS 84 AND 85.

84. Amendments to Regulations 17 and 19. 85. Labeling of Bitters.

(F. I. D. 84.)

AMENDMENTS TO REGULATIONS 17 AND 19.

The Board of Food and Drug Inspection recommends that Regulations 17 and 19 of the Rules and Regulations for the Enforcement of the Food and Drugs Act of June 30, 1906, be amended to read as follows, such amendments to become and be effective at the date of issue:

MISBRANDING.

REGULATION 17. LABEL.

(Section 8.)

(a) The term "label" applies to any printed, pictorial, or other matter upon or attached to any package of a food or drug product, or any container thereof subject to the provisions of this act.

(b) The principal label shall consist, first, of all information which the food and drugs act, June 30, 1906, specifically requires, to wit, the name of the place of manufacture in the case of food compounds or mixtures sold under a distinctive name; statements which show that the articles are compounds, mixtures, or blends; the words "compound," "mixture," or "blend," and words designating substances or their derivatives and proportions required to be named in the case of foods and drugs. All this information shall appear upon the principal label, and should have no intervening descriptive or explanatory reading matter. Second, if the name of the manufacturer and place of manufacture are given, they should also appear upon the principal label. Third, preferably upon the principal label, in conjunction with the name of the substance, such phrases as "artificially colored," "colored with sulphate of copper," or any other such descriptive phrases

necessary to be announced should be conspicuously displayed. Fourth,

elsewhere upon the principal label other matter may appear in the discretion of the manufacturer. If the contents are stated in terms of weight or measure, such statement should appear upon the principal label and must be couched in plain terms, as required by Regulation 29.

(c) If the principal label is in a foreign language, all information required by law and such other information as indicated above in (b) shall appear upon it in English. Besides the principal label in the language of the country of production, there may be also one or more other labels, if desired, in other languages, but none of them more prominent than the principal label, and these other labels must bear the information required by law, but not necessarily in English. The size of the type used to declare the information required by the act shall not be smaller than 8-point (brevier) capitals: Provided, That in case the size of the package will not permit the use of 8-point type, the size of the type may be reduced proportionately.

(d) Descriptive matter upon the label shall be free from any statement, design, or device regarding the article or the ingredients or substances contained therein, or quality thereof, or place of origin, which is false or misleading in any particular. The term "design" or "device" applies to pictorial matter of every description, and to abbreviations, characters, or signs for weights, measures, or names of

substances.

(e) An article containing more than one food product or active medicinal agent is misbranded if named after a single constituent.

In the case of drugs the nomenclature employed by the United States

Pharmacopæia and the National Formulary shall obtain.

(f) The use of any false or misleading statement, design, or device appearing on any part of the label shall not be justified by any statement given as the opinion of an expert or other person, nor by any descriptive matter explaining the use of the false or misleading statement, design, or device.

REGULATION 19. CHARACTER OF NAME.

(Section 8.)

(a) A simple or unmixed food or drug product not bearing a distinctive name should be designated by its common name in the English language; or if a drug, by any name recognized in the United States Pharmacopæia or National Formulary. No further description of the components or qualities is required, except as to content of alcohol, morphine, etc.

(b) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place, when such name indicates that the article was manufac-

tured or produced in that place.

(c) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

(d) A foreign name which is recognized as distinctive of a product of a foreign country shall not be used upon an article of domestic origin

except as an indication of the type or style of quality or manufacture, and then only when so qualified that it can not be offered for sale under the name of a foreign article.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

GEO. B. CORTELYOU,

Secretary of the Treasury.

JAMES WILSON,

Secretary of Agriculture.

OSCAR STRAUS,

Secretary of Commerce and Labor.

Washington, D. C., January 31, 1908.

(F. I. D. 85.)

LABELING OF BITTERS.

In section 6 of the food and drugs act of June 30, 1906, the term "drug," as defined in the act, includes "all medicinal preparations recognized in the United States Pharmacopæia or National Formulary for internal or external use and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease in either man or other animals."

Notwithstanding this comprehensive definition, it appears from a large correspondence on this subject that there is still some uncertainty as to whether or not certain commodities should be classed as drug products, and of this type are the alcoholic products known as "bitters."

It is necessary to determine definitely whether or not "bitters," for example, are to be classed as drugs. This is necessary for the reason that under section 8 of the food and drugs act a drug is deemed misbranded "if the package fails to bear a statement on the label of the quantity or proportion of any alcohol * * * contained therein."

On investigation of labels that are found on "bitters" it has been discovered that in most cases they are recommended for various ailments. For example, they are said to "aid digestion," "allay irritation of the nerves," "excite the appetite to a marvelous degree," "prolong life." Again, labels bear the statements "is not only a delicious beverage, but also a wonderful tonic," "valuable in intermittent fever, illness due to the spleen, stomach catarrh, diarrhea, colic, cramps, vomiting, hypochondria, etc." These are examples of common phrases found on labels. "Bitters" are frequently prescribed in the same manner as medicines in general. For example, "to be taken in table-

spoons full every hour," "increase the dose if the effect is not immediate," etc.

It is well known that certain substances may be used both as foods and as drugs. It is claimed by some that certain products advertised as medicinal products are not sold and consumed on account of their medicinal properties, but merely as alcoholic beverages. This, however, does not seem to be consistent with the information found on some of the labels.

In a case of this kind the classification will be made from a study of the literature published in connection with the article and by ascertaining the uses to which it is put. When a "bitters" is described on the carton or label attached to the bottle, or any advertising matter accompanying the package, as possessing any medicinal or tonic properties, or if in fact it does possess such value, it must of necessity be classed as a drug product and, in consequence of this classification, bear a statement of the quantity or proportion of any alcohol contained therein. The method of stating the proportion of alcohol is that of per cent by volume, as suggested in Regulation 28 of Circular 21 of the Office of the Secretary. In Food Inspection Decision 52 is the suggested order in which the statements required by law should occur on a label.

This food inspection decision is promulgated so that those interested in the importation of "bitters" may understand how the Department is obliged to rule in such cases, the decision as to whether a product be a food or a drug depending not only upon what claims are made for it, but also upon the uses to which it is put. This same principle must guide the Department in its interpretation of the law governing similar products which have the dual function of serving as both foods and drugs.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., February 3, 1908.

United States Department of Agriculture,

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 86.

ORIGINAL PACKAGES: INTERPRETATION OF REGULATION 2 OF RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE FOOD AND DRUGS ACT.

Regulation 2 of the Rules and Regulations for the Enforcement of the Food and Drugs Act (Circular No. 21, Office of the Secretary, United States Department of Agriculture) declares—

The term "original unbroken package" as used in this act is the original package, carton, case, can, box, barrel, bottle, phial, or other receptacle put up by the manufacturer, to which the label is attached, or which may be suitable for the attachment of a label, making one complete package of the food or drug article. The original package contemplated includes both the wholesale and the retail package.

This definition of original unbroken package was inserted in the regulations for the purpose of facilitating the administration of the act. It was intended to be, or at all events is, a guide to the inspectors who purchase the samples throughout the United States, as to the nature of an original unbroken package. Upon the basis of this regulation the inspectors have collected a large number of samples, but when an examination of some of the cases has been made, with prosecutions in view, it has been found that no action could be taken because the package bought was not an original package, though apparently so upon a reasonable interpretation of the regulation. Furthermore, the Department is advised that the food commissioners of some of the States, guided by a literal interpretation of the regulation, have refrained from enforcement of their laws upon all packages apparently embraced within its terms.

It is believed that the discussion of the question and the cases cited will prove helpful to those United States attorneys to whom cases are reported for seizure in original packages under section 10 of the food and drugs act.

To prevent the further misconception of the scope of the regulation, and for the information of those concerned, it is the purpose of this decision to set out the interpretation the Department has made of it, and the authorities therefor.

Construed in the light of judicial determinations of the question, the terms "original unbroken packages" (as set out in the regulation and as used in sections 2 and 10 of the act) and "unbroken packages" (as used in section 3 of the act) will be restricted to such a package containing the food and drug product as has been prepared for shipment or transportation and shipped or transported, as an entirety or unit, from a State, Territory, or the District of Columbia, or a foreign country, into another State, Territory, or the District of Columbia, and delivered to the consignee, remaining his property in the identical form and condition in which it was shipped or transported. After arrival in a State and delivery to the consignee, if any part of the contents of the package be removed, or if the package be opened and commingled with other property, or if the package be transferred by the consignee, it is no longer an original package. The retail package is not an original package unless it bears the characteristics set forth above.

It is not practicable to frame an universally accurate and satisfactory definition of an "original package." No statute has done so, and the Department disclaims any attempt to do so in its construction of the terms. The question must be determined largely upon each case as it arises, with the guidance of the authoritative decisions of the courts, which for the sake of elucidating and explaining the subject are presented in the following pages of this decision.

The food and drugs act of June 30, 1906, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," provides in sections 2, 3, and 10 as follows:

SEC. 2. * * * Any person * * * who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article [food or drug] so adulterated or misbranded within the meaning of this Act, * * * shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court. * * *

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs * * * which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, * * *

SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in *original unbroken packages*, * * * shall be liable to be proceeded against in any district court of the

United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. * * *

In the enforcement and administration of these provisions, it is necessary to determine what is an "original unbroken package" or an "unbroken package." For the purpose of such determination it is not permissible to resort to the common and popular understanding of these words, for the reason that they have received a special meaning and import when applied to the law of interstate and foreign commerce through numerous judicial decisions upon the commerce clause of the Constitution and were employed in the food and drugs act in that sense. It will be seen hereafter that these words, when used in their legal signification in connection with interstate or foreign commerce, are of restricted import.

The expression "original package" was employed for the first time in the case of Brown v. Maryland (25 U. S., 419), decided by the Supreme Court of the United States in 1827. In the larger number of cases subsequent thereto in which the expression is used it will be seen that no modification is made in the term. But in the present act the word "unbroken" has been added in sections 2 and 10, and has been substituted for "original" in section 3, but without qualifying effect, as the courts have used the words "unbroken" and "original" as synonymous. It is held, therefore, that their combination or substitution effects no change in significance. (Low et al. v. Austin, 80 U. S., 29; United States v. Fox, Federal Cases No. 15155.)

It is sought in this decision to show what is an original package. Possibly it might be logical to proceed to that question at once, but it has been thought advisable, if not necessary, to consider first the extent of the power of Congress over food and drug articles transported into a State from another State or Territory, the District of Columbia, or a foreign country, and there remaining. When this has been considered it will appear that the control of Congress over food and drugs, so transported, continues, after their arrival in the State, so long as they are in original packages. It will then be shown what is an original package.

In Brown v. Maryland, heretofore referred to, it was decided that the law of Maryland imposing a license tax upon all importers of foreign articles, dry goods, and merchandise by bale or package, and upon other persons selling the same, was unconstitutional so far as it undertook to require such license tax from an importer of goods from a foreign country for the sale thereof in the original packages in which they were imported; that such a tax was an interference with foreign commerce, which, under the Constitution of the United States, was committed to Congress to regulate. The conclusion of the court is contained in the following syllabus:

An act of a State legislature, requiring all importers of foreign goods by the bale or package, etc., and other persons selling the same by wholesale, bale, or pack-

age, etc., to take out a license, for which they shall pay \$50, and in case of neglect or refusal to take out such license, subjecting them to certain forfeitures and penalties, is repugnant to that provision of the Constitution of the United States which declares that "no State shall, without the consent of Congress, lay any impost or duty on imports or exports, except what may be absolutely necessary for executing its inspection laws;" and to that which declares that Congress shall have power "to regulate commerce with foreign nations, among the several States, and with the Indian tribes."

The goods in this case were imported from a foreign country, but the court said—

It may be proper to add, that we suppose the principles laid down in this case, to apply equally to importations from a sister State.

This dictum was afterwards affirmed as law in the case of Leisy v. Hardin (135 U. S., 100), decided in 1899, which overruled Peirce v. New Hampshire (46 U. S., 504), decided subsequently to Brown v. Maryland. In Peirce v. New Hampshire it was held that a barrel of gin shipped from Massachusetts to New Hampshire was subject to the law of New Hampshire prohibiting the sale of gin, so as to render the seller amenable to the law for the sale of the barrel in the exact condition in which he received it.

In the case of Waring v. The Mayor (75 U. S., 110), decided in 1868, the Supreme Court held that sacks of salt brought into Mobile Bay from England and sold to a merchant in Mobile City after arrival of the vessel in the bay, 25 miles from the city, and transported by the merchant's lighters to Mobile, were subject to taxation by the city. The sacks had been sold by the importer after their arrival in Alabama, and hence were merged in the general mass of property in the State and were no longer under the shelter of the commerce clause of the Constitution when taxed by the city of Mobile.

In 1871 the question of taxation of imports from foreign countries in the original packages came again before the Supreme Court in the case of Low et al. v. Austin (80 U. S., 29), and it was there held—

Goods imported from a foreign country, upon which the duties and charges at the custom-house have been paid, are not subject to State taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports, or upon the goods as part of the general property of the citizens of the State, which is subjected to an ad valorem tax.

It will be seen that the court here uses the expression "original cases, unbroken and unsold."

In Cook v. Pennsylvania (97 U. S., 566), decided in 1878, the same court held a tax imposed by the law of the State upon every auctioneer on the amount of his sales invalid when applied to the sale of imported goods in original packages. It was held that—

The statute of Pennsylvania of May 20, 1853, modified by that of April 9, 1859, requiring every auctioneer to collect and pay into the State treasury a tax on his sales, is, when applied to imported goods in the original packages, by him sold

for the importer, in conflict with sections 8 and 10 of article 1 of the Constitution of the United States, and therefore void, as laying a duty on imports and being a regulation of commerce.

In Schollenberger v. Pennsylvania (171 U.S., 1) an act of the State of Pennsylvania prohibiting the sale of any oleaginous substance or compound of the same designed to take the place of butter was held unconstitutional so far as attempted to be enforced in the case of a sale of a 40-pound tub of oleomargarine imported from Rhode Island and sold as oleomargarine in the identical condition in which imported. The law of the case is contained in the following syllabus:

Act No. 21 of the legislature of Pennsylvania, enacted May 21, 1885, enacting that "no person, firm or corporate body shall manufacture out of any oleaginous substance, or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale, or have in his, her or their possession with intent to sell the same as an article of food," and making such act a misdemeanor, punishable by fine and imprisonment, is invalid to the extent that it prohibits the introduction of oleomargarine from another State, and its sale in the original package.

The right of a State to prohibit the importation of a recognized article of commerce was distinctly denied by the Supreme Court in the case of Bowman v. Chicago and Northwestern Railway Company (125 U. S., 465), decided in 1887. In that case the court declared invalid the statute of Iowa forbidding any railway company from bringing into the State intoxicating liquors unless previously furnished with a certificate from the county auditor that the consignee was authorized to sell them. It was held that—

A State can not, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union, unless the consent of Congress, express or implied, is first obtained.

Section 1553 of the Code of the State of Iowa, as amended by C. 143 of the Acts of the 20th General Assembly in 1886, (forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, without being first furnished with a certificate, under the seal of the auditor of the county to which it is to be transported or consigned, certifying that the consignee or person to whom it is to be transported or delivered is authorized to sell intoxicating liquors in the county), although adopted without a purpose of affecting interstate commerce, but as a part of a general system designed to protect the health and morals of the people against the evils resulting from the unrestricted manufacture and sale of intoxicating liquors within the State, is neither an inspection law, nor a quarantine law, but is essentially a regulation of commerce among the States, affecting interstate commerce in an essential and vital part, and, not being sanctioned by the authority, express or implied, of Congress, is repugnant to the Constitution of the United States.

It will be seen from the above that in this case the question of the right of the importer to sell the article so imported in the original package was not decided.

Two years later the question just stated was squarely presented to the court in the case of Leisy v. Hardin (135 U. S., 100), where it was held that the statute of Iowa prohibiting the sale of intoxicating liquors, except for certain prescribed purposes, was, as applied to the sale by the importer, in original packages or kegs, unbroken and unopened, of liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the Constitution of the United States granting to Congress the power to regulate commerce among the States. The law of the case was stated in the following syllabus:

A statute of a State, prohibiting the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the State, is, as applied to a sale by the importer, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

Peirce v. New Hampshire, 5 How., 504, overruled.

In Vance v. Vandercook Co. (170 U. S., 438) the court reaffirmed its prior decisions upon the subject. The law of interstate commerce and the relation of the original package thereto is succinctly stated in the following syllabus to the opinion:

It is settled by previous adjudications of this court—

- (1) * * *
- (2) That the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a State law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.
- (3) That the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the State. * * *

These decisions settled the respective rights of the Federal and State governments over goods moving in interstate and foreign commerce. It was determined that a State could not prevent the introduction into its territory of a recognized article of commerce; that it could not prevent the disposition by the importer in the original package of an article of commerce brought into its territory; and that Congress alone could regulate interstate commerce in such goods and the disposition of them in the original package by the importer. This is now the settled law. Hence the food and drugs act asserts the right of the United States to prohibit the sale or disposition of adulterated and misbranded food and drugs imported into a State and remaining in the original package.

The next question to be determined is, At what time in the existence of imports does the power of Congress to regulate their disposition

cease? Stated otherwise, When does an original package cease to be such and the regulation of its disposition pass beyond the jurisdiction of the Federal Government?

This question was answered in general terms by the Supreme Court in Brown v. Maryland, heretofore mentioned, as follows:

It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State.

In the case of Low et al. v. Austin (80 U. S., 29), decided in 1871, it was held that—

Goods imported do not lose their character as imports, and become incorporated into the mass of property of the State until they have passed from the control of the importer, or been broken up by him from their original cases.

Again in Vance v. Vandercook Co., heretofore referred to, it was held that—

Goods received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original packages they have been commingled with the general mass of property in the State.

In the case of Heyman v. Southern Railway Company (203 U. S., 270), recently decided, it was said—

In the absence of Congressional legislation goods moving in interstate commerce cease to be such commerce only after delivery and sale in the original package.

From these decisions it will be seen that merchandise brought into a State is protected from State interference only so long as it remains in the original package, unbroken, and in the hands of the importer. If the importer sells the article in the identical condition and form in which imported, or if he breaks the package, it is no longer an original package, but has become merged in the mass of property in the State and subject to its laws.

Let these decisions be applied to a hypothetical case under the food and drugs act:

A, a wholesale dealer in New York City, ships by express to B, in Hoboken, N.J., a box containing one dozen cans of adulterated condensed milk. B receives them into his store and shortly thereafter sells the box, just as received, to C.

B in this example would be liable to the penalties prescribed by the act, because he is the importer and sold the original package. But, should C, in due course, sell this identical box to D in Hoboken, he could not be successfully prosecuted under the act because he is not the importer. When the box was sold by B it lost the character of an original package and became merged in the property of the State, and the State only may regulate its disposition by C.

Suppose B, after receipt of the box, opens it and removes a can of the milk, which he sells to C. B is exempt from prosecution under the food and drugs act for the sale of this can or for a subsequent sale of the remaining eleven, even though he sells the eleven in the box. By this act of removing one can he has broken the original package and in consequence destroyed the jurisdiction of the United States over it and over him.

But suppose B simply removes the top of the box to permit inspection, in no way disturbing the contents, replaces the top, and sells box and milk to C. Has B incurred the penalties prescribed by the food and drugs act? Such a question has not been presented to the Supreme Court, but two cases very similar have been decided by the lower Federal courts.

The first case, United States v. Fox (Federal Cases No. 15155), decided in 1869, was a suit by the United States under the internal-revenue act of July 13, 1866 (14 Stat., 144), to recover the penalties therein prescribed for the sale of perfumery without affixing a proper stamp thereon. A proviso in the act prescribed that when imported perfumery was sold in the original and unbroken package in which the bottle or other inclosure was packed by the manufacturer the person so selling should not be liable to the aforesaid penalty.

Fox sold one small wooden box containing twelve 1½-ounce bottles of hair oil and a similar but larger box containing twelve bottles of pomade. He opened both boxes, so that the purchaser might examine the contents. The top of the smaller box was put on again before delivery without change of the contents. In the larger box, containing pomade, Fox, at the request of the purchaser, substituted three smaller bottles taken from the shelf of the store, and nailed up the box.

In respect to the smaller box of oil the court said—

Although the top of this box was taken off by the defendant Fox, it was only for the purpose of enabling the witness Quivey to ascertain the kind and quality of its contents, and before the sale and delivery to him it was put on again, with the contents unchanged in kind or quantity. Under these circumstances the defendant must be considered as selling an unbroken package, the contents of which were not then required to be stamped.

But as to the sale of the box of pomade, the court said—

The package was opened, and three bottles being taken out of it, it was sold with only the remaining nine bottles in it. This was a broken package, and so the court instructed the jury.

The verdict of the jury in favor of the defendant, Fox, was set aside on motion of the United States, upon the ground that the package of pomade was not an original package, the court holding—

Goods are sold "in the original and unbroken package" within the meaning of the act of July 13, 1866 (14 Stat., 144), although the package is opened for inspection, if closed again before delivery without the contents being changed.

In the other case, In re McAllister (51 Fed., 282), decided in 1892, the facts were these: Two men, emissaries of a butter dealer in Balti-

more, went to the store of McAllister, a dealer in oleomargarine, and sought to buy butter. McAllister stated that he had none, but could supply oleomargarine. They requested him to remove the lid from the tub of oleomargarine that they might look at it. He did so, stating that he could not sell less than 10 pounds, as it reached him in the tub from Chicago. They purchased the tub and forthwith informed on him. He was duly tried in the State court and convicted. The State Court of Appeals affirmed the conviction, and McAllister applied to the Circuit Court of the United States for a writ of habeas corpus, on the ground that the sale of the tub of oleomargarine was a sale of an original package and beyond the power of the State to prohibit, which it sought to do in an act of the legislature. The court granted the writ and announced the proposition of law involved, in the following syllabus to the case:

Removing the lid of an original package of oleomargarine, so that a prospective buyer may examine its contents, is not such a breaking of the package as will destroy its original character.

In reaching the above conclusion the court said—

It is argued that the taking the lid from the tub containing this oleomargarine was a breaking of the package so as to destroy its original character. This me no sense did it do. The goods had in no way become commingled with his property or the general property of the State (Low v. Austin, 13 Wall., 29). Anyone calling for oleomargarine with an honest purpose would have purchased this package as an original one, even if he knew it had had its lid lifted off once to see whether or not it held another substance than it purported to hold. The laws of the United States recognize oleomargarine as a merchantable article. Being such, while a State may perhaps regulate its sale, it can not prohibit its importation. The statute in question does this, and is unconstitutional, and in this respect void. The petitioner is discharged.

Upon the authority of these two cases, and following their reasoning, it must be concluded that B, in the last example (p. 8), is amenable to the penalties prescribed by the food and drugs act. The first of these cases has another and important significance in connection with this decision, namely, the use of the word "unbroken" as synonymous with "original," thus substantiating the statement in the preliminary part of this discussion that the courts used the words interchangeably.

An example may be profitably introduced at this point to show how far goods moving in interstate commerce may be subjected to seizure under section 10 of the act.

A, a wholesale dealer in New York City, ships 50 barrels of flour to B in St. Louis, Mo. This flour may be seized, if adulterated or misbranded, at New York City after delivery to the carrier, or at any point along the route, and may likewise be seized in St. Louis in the hands of the carrier before delivery to B, regardless of the question of whether or not it still remains in original packages, which, in the illustration, are the barrels.

After delivery of the flour to B it may still be seized, in his hands, if it remains in the barrels (the original packages) as shipped. But if B, after delivery to him, transfers the flour to 5-pound sacks, or otherwise breaks the barrels and commingles the flour with his stock of goods, the original packages have been destroyed, and it is no longer subject to seizure by the United States; nor are the barrels liable to seizure by the United States after B disposes of them to C in Missouri, even though no alteration is made in their condition.

Having now briefly reviewed the decisions of the Federal courts asserting the power of Congress to regulate the disposition of goods imported into a State from elsewhere, it is necessary to advert to the original question of what is an original package.

The first distinct definition of an original package by the Supreme Court was announced in the case of Austin v. Tennessee (179 U. S., 343), where it was held that—

Original packages are such as are used in bona fide transactions carried on between the manufacturer and wholesale dealers residing in different States.

This is hardly an accurate test to determine what is an original package in every case, and certainly can not restrict the provisions of sections 2 and 10 of the food and drugs act of 1906 to transactions wholly between the manufacturer and the wholesale dealer. If so, the plain intent of the act could be easily defeated, in the case of sales by importers in original packages. An illustration will forcibly demonstrate the incompleteness of the definition when applied to the food and drugs act.

It will scarcely be gainsaid that a can of tomatoes shipped by a person in no way connected with the manufacture or preparation thereof, from one State to a person in another State in no way engaged in the general sale of such commodities, is a shipment and receipt of an original package, and if the recipient disposes of it in any way, in the form in which it comes to him, he has violated the food and drugs act.

The above language of the court is materially modified by its expressions in Schollenberger v. Pennsylvania, heretofore referred to, where it was said—

The right of the importer to sell can not depend upon whether the original package is suitable for retail trade or not. His right to sell is the same whether to consumers or to wholesale dealers in the article, provided he sells them in original packages.

A much more satisfactory and exact definition is contained in the decision in Guckenheimer v. Sellers (81 Fed., 997), where it was held that—

An original package within the meaning of the law of interstate commerce, is the package delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped.

And when this is followed by the expression of the court in the case In re Beine (42 Fed., 545), where it was said—

It is not perceived why, in the absence of a regulation by Congress to the contrary, the importer may not determine for himself the form and size of the packages he puts up for export.

it seems there could hardly arise a question in the enforcement of the provisions of the food and drugs act under consideration that could not be tested by the foregoing definitions.

Concrete examples of what have been held to be original packages are found in several of the adjudicated cases:

Peirce v. New Hampshire (46 U.S., 504): A barrel of gin.

Bowman v. Chicago and Northwestern Railway Company (125 U. S., 465): A barrel of beer.

Leisy v. Hardin (135 U.S., 100): One-fourth barrel of beer; one-eighth barrel of beer; and a sealed case of beer.

Schollenberger v. Pennsylvania (171 U. S., 1): 10 and 40 pound tubs of oleomargarine.

Rhodes v. Iowa (170 U.S., 412): A box of liquors.

May v. New Orleans (178 U.S., 496): Box, case, or bale in which were inclosed separate bundles and packages of dry goods.

Austin v. Tennessee (179 U. S., 343): A large open basket in which were shipped numerous pasteboard boxes, each containing ten cigarettes.

Plumley v. Massachusetts (155 U.S., 461): A 10-pound package of oleomargarine. In re Beine (42 Fed., 545): A single bottle of beer or whisky, packed, sealed, and nailed up in a pasteboard or wooden box.

In re Harmon (43 Fed., 372): An open pine box containing several pint and quart bottles of whisky, each done up in a paper wrapper or box and sealed.

In re McAllister (51 Fed., 282): A 10-pound tub of oleomargarine, even though its lid had been removed to allow inspection by the purchaser.

United States v. Fox (Federal Cases No. 15155): A small wooden box containing twelve $1\frac{1}{2}$ -ounce bottles of oil, even though its top had been removed by the seller to permit inspection by the purchaser.

Guckenheimer v. Sellers (81 Fed., 997): A single bottle of beer, if shipped singly; several bottles of beer fastened together and so shipped constitute one package; if several bottles be inclosed in one box, barrel, crate, or other receptacle, the box, barrel, crate, or other receptacle is the original package.

In May v. New Orleans (178 U. S., 496), decided in 1899, the Supreme Court held that where dry goods were imported into New Orleans from a foreign country in boxes, bales, and cases, each containing separate bundles of merchandise, separately marked and packed, which were so exposed for sale or taken out of the boxes, bales, and cases and sold, the boxes, bales, and cases were the original packages, and when the separate bundles were removed or exposed for sale the goods lost their distinctive character as imports and each parcel or bundle became a part of the general mass of property in the State and subject to local taxation. The syllabus of the case states the law as follows:

May & Co., merchants at New Orleans, were engaged in the business of importing goods from abroad, and selling them. In each box or case in which they were brought into this country, there would be many packages, each of which was separately marked and wrapped. The importer sold each package separately. The city of New Orleans taxed the goods after they reached the hands of the importer (the duties having been paid) and were ready for sale. *Held*—

(1) That the box, case, or bale in which the separate parcels or bundles were placed by the foreign seller, manufacturer or packer was to be regarded as the original package, and when it reached its destination for trade or sale and was opened for the purpose of using or exposing to sale the separate parcels or bundles the goods lost their distinctive character as imports and each parcel or bundle became a part of the general mass of property in the State and subject to local taxation.

(2) * * *

The case In re Harmon (43 Fed., 372) presented the following facts: Harmon was agent in Sardis, Miss., for Jordan, a liquor dealer in Memphis, Tenn. Panola County, in which Sardis is situated, was a "prohibition" county. Jordan shipped from Memphis to Harmon at Sardis a number of boxes containing bottles or flasks of whisky, some containing a pint, others a quart. These bottles or flasks had each a paper wrapper or box placed around it and sealed. These boxes so inclosed were by Jordan placed in ordinary pine boxes, but without cover, closely packed together. They were so shipped, and there was an understanding between Harmon and Jordan that the wooden boxes were to be returned to Jordan when all the bottles or flasks of whisky had been sold. (The fact that these boxes were comparatively valueless and not worth the return express charges exposed the agreement to return them to the suspicion of fraud.) Harmon received the liquors in this condition, and when a sale was effected would take each bottle out of the box and deliver to purchaser. He was convicted in the State court for selling liquor. Being imprisoned upon the judgment, he applied to the Circuit Court of the United States for a writ of habeas corpus, alleging the restraint of his liberty in violation of the Constitution of the United States, supporting this contention by the allegation that the whisky was sold in original packages and therefore beyond the jurisdiction of the State to prevent. The decision was as follows:

Where bottles of whisky, each sealed up in a paper wrapper and closely packed together in uncovered wooden boxes furnished by an express company, and marked, "To be returned," are shipped from one State to another, the boxes, and not the bottles, constitute the "original packages" within the meaning of decisions of the Supreme Court upon the interstate commerce provision of the National Constitution.

The case of Guckenheimer et al. v. Sellers et al. (81 Fed., 997) contains the following definition of an original package:

An original package, within the meaning of the law of interstate commerce, is the package delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. In the case of liquors in bottles, if the bottles are shipped singly, each is an original package, but if a number are fastened together, and marked, or are packed in a box, barrel, crate, or other receptacle, such bundle, box, barrel, crate, or receptacle constitutes the original package.

In the Austin case (179 U.S., 343) there was presented the question whether or not a pasteboard box containing 10 cigarettes, over one end

of which was securely pasted the United States revenue stamp, was an original package under the circumstancés of that case and within the prior decisions of the court. The facts were—

The legislature of Tennessee in 1897 passed an act to prohibit the sale of any cigarettes or introduction of them into the State for that purpose. Austin was a merchant in the State and in the course of his business purchased from a factory in North Carolina a number of packages of cigarettes put up in small boxes, containing 10 cigarettes each, there being securely pasted over the end of each box a United States revenue stamp. When the order was received by the North Carolina factory, the packages above described were placed in a pile on the floor of their warehouse and the agent of the Southern Express Company notified to come for them. An employee of the company brought with him a large basket without cover, belonging to his company, in which he gathered the individual boxes and took them to the station for carriage to Austin, in Tennessee. When the basket containing the packages reached its destination in Tennessee, the agent of the company there took it to Austin's store and emptied the packages on the counter of the store and took the basket away with him. Austin immediately exposed the cigarettes for sale and sold one package to a customer. He was indicted, tried, and convicted for this sale. His defense was that the package sold was an original package, and that the law of the State so far as applicable to this transaction was unconstitutional as an interference with interstate commerce. Upon appeal to the Supreme Court of the State the conviction was affirmed. He then sued out a writ of error to the Supreme Court of the United States. A majority of the Justices held that the original package in this case was the basket in which the packages were transported, and not the package sold. They therefore affirmed the judgment of the State court.

The results of the conclusions reached are expressed in the syllabus, as follows:

Original packages are such as are used in *bona fide* transactions carried on between the manufacturer and wholesale dealers residing in different States. Where the size of the package is such as to indicate that it was prepared for the purpose of evading the law of the State to which it is sent, it will not be protected as an original package against the police laws of that State.

Where cigarettes were imported in paper packages of three inches in length and one and one-half in width, containing ten cigarettes, unboxed but thrown loosely into baskets: *Held*, that such paper parcels were not original packages within the meaning of the law, and that such importations were evidently made for the purpose of evading the law of the State prohibiting the sale of cigarettes.

The court rested its decision in this case more upon the palpable fraud upon the laws of Tennessee than upon any attempt to analyze the definition of an original package. So in Cook v. Marshall County, Iowa (196 U. S., 261), the boxes of cigarettes in the same form as in the Austin case were shoveled into the car in Missouri and delivered to Cook

in Iowa in that condition. They were not inclosed in any receptacle, The State imposed a tax of \$300 on the business but shipped in bulk. of selling cigarettes. Cook resisted the payment upon the ground that he sold only in original packages and was therefore protected by the interstate commerce clause of the Constitution. Having lost in the State courts, he prosecuted a writ of error to the Supreme Court of the United States, where it was held that Cook was not exempt from the tax; that the manner of dealing disclosed by the facts in the case was a gross fraud upon the laws of Iowa, and the court would not lend its aid to such a proceeding. The question of what was an original package in the case was a matter of minor importance, though the court said the term original package did not include packages which could not be commercially transported from one State to another. The syllabus contains the law, as follows:

The term original package is not defined by statute, and while it may be impossible to judicially determine its size or shape, under the principle upon which its exemption while an article of interstate commerce is founded, the term does not include packages which can not be commercially transported from one State to another.

While a perfectly lawful act may not be impugned by the fact that the person doing it was impelled thereto by a bad motive, where the lawfulness or unlawfulness of the act is made an issue, the intent of the actor may be material in characterizing the transaction, and where a party, in transporting goods from one State to another, selects an unusual method for the express purpose of evading or defying the police laws of the latter State the commerce clause of the Federal Constitution can not be invoked as a cover for fraudulent dealing.

This court adheres to its decision in Austin v. Tennessee, 179 U. S., 343, that small pasteboard boxes each containing ten cigarettes, and sealed and stamped with the revenue stamp, whether shipped in a basket or loosely, not boxed, baled, or attached together, and not separately or otherwise addressed but for which the express company has given a receipt and agreement to deliver them to a person named therein in another State, are not original packages and are not protected under the commerce clause of the Federal Constitution from regulation by the police power of the State.

From a consideration of all the decisions and upon the basis of common understanding of the words, it seems that an original package within the meaning of the food and drugs act is the unit, complete in itself, delivered by the shipper to the carrier, addressed to the consignee, and received by him in the identical condition in which it was sent, without separation of the contents in any manner. This unit may be a hogshead containing 500 bottles of wine, or a single can of tomatoes, or it is a small ounce phial of some drug if shipped to the consignee in that form; and if the consignee sells or gives away any one of the three in the unaltered condition in which he received it, if the contents be adulterated or misbranded, he has violated the act.

This presentation of the decisions of the courts would not be complete, and certainly not satisfactory, if some reference were not made to

three very important decisions, two of the Supreme Court of the United States—Plumley v. Massachusetts (155 U. S., 461) and Crossman v. Lurman (192 U. S., 189)—and one of the Circuit Court of Appeals of the Sixth Circuit—Arbuckle Bros. v. Blackburn, Dairy and Food Commission of Ohio (113 Fed., 616). But they are referred to here simply to show that, so far as the food and drugs act of June 30, 1906, is concerned, they are in a sense obsolete. These decisions were rendered prior to the passage of the aforesaid act, and asserted the right of the States to prohibit the sale and traffic in adulterated and misbranded foods and drugs even in original packages. They were rendered in the absence of Congressional action covering the entire subject-matter of interstate commerce in foods and drugs. Since then Congress has assumed its full authority over the subject by the passage of the act of June 30, 1906.

The decisions proceeded upon the well-recognized principle that in the absence of complete Federal regulation of interstate and foreign commerce effect will be given to the legitimate exercise of the police powers of the States, even though incidentally affecting that commerce. There can scarcely be a doubt that since the enactment of the food and drugs act all power of the States over interstate commerce in foods and drugs, including the regulation of importations and sales in original packages, has been abrogated, and the subject is entirely and exclusively under the control of the Federal Government. That such is the state of the law is clearly and succinctly shown by the following quotation from the opinion of Justice Harlan in the case of Reid v. Colorado, 187 U. S., at page 146:

It is quite true, as urged on behalf of the defendant, that the transportation of live stock from State to State is a branch of interstate commerce and that any specified rule or regulation in respect of such transportation, which Congress may lawfully prescribe or authorize and which may properly be deemed a regulation of such commerce, is paramount throughout the Union. So that when the entire subject of the transportation of live stock from one State to another is taken under direct national supervision and a system devised by which diseased stock may be excluded from interstate commerce, all local or State regulations in respect of such matters and covering the same ground will cease to have any force, whether formally abrogated or not; and such rules and regulations as Congress may lawfully prescribe or authorize will alone control.

* * The power which the States might thus exercise may in this way be suspended until national control is abandoned and the subject be thereby left under the police power of the States.

This case involved the validity of a certain act of the State of Colorado designed to prevent the introduction of infectious and contagious diseases among the cattle of the State. The defendant contended that the act was void as an interference with interstate commerce, and because the subject-matter had already been covered by an act of Congress. The Supreme Court sustained the validity of the act of Colorado, because a legitimate exercise of the police power in the absence

of complete regulation by Congress covering the matter. The act of Congress in force at that time did not attempt a full and complete regulation of interstate transportation of animals.

The principle that the State police laws affecting interstate and foreign commerce must yield to the regulation of Congress when it shall assume jurisdiction is well and tersely stated by Freund in his work on Police Power, at page 82, as follows:

SEC. 85. The State may enact measures for the protection of safety, order, and morals, though affecting foreign and interstate commerce, subject to the following principles:

1. Every measure of State legislation, however legitimate in itself, yields to positive regulation of interstate or foreign commerce by act of Congress, inconsistent with such measure or intended fully to cover the same matter.

* * *

F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., January 31, 1908.

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OFFICE OF THE SECRETARY, BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 87.

LABELING OF CORN SIRUP.

Washington, D. C., February 13, 1908.

We have each given careful consideration to the labeling, under the pure-food law, of the thick, viscous sirup obtained by the incomplete hydrolysis of the starch of corn, and composed essentially of dextrose, maltose, and dextrine.

In our opinion it is lawful to label this sirup as "Corn Sirup;" and if to the corn sirup there is added a small percentage of refiner's sirup, a product of the cane, the mixture, in our judgment, is not misbranded if labeled "Corn Sirup with Cane Flavor."

> GEO. B. CORTELYOU, Secretary of the Treasury. JAMES WILSON, Secretary of Agriculture. OSCAR S. STRAUS, Secretary of Commerce and Labor.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. $\begin{cases} 40. & \text{Filing Guaranty.} \\ 41. & \text{Approval of Labels.} \\ 42. & \text{Mixing Flours.} \\ 43. & \text{Relabeling of Goods on Hand.} \end{cases}$
- F. I. D. { 44. Scope and Purpose of Food Inspection Decisions. Blended Whiskies.
- F. I. D. \begin{cases} 46, as amended. Fictitious Firm Names. 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.
- - 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
 59. Imitation Coffee.
 51. Coloring of Butter and Cheese.
 52. Form of Label.
 53. Formula on the Label of Drugs.
- - 53. Formula on the Label of Drugs.

- 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
 56. Names to be Employed in Declaring the Amount of the Ingredients as
- Required by the Law.
 - 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Com-
 - 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
 - 59. National Formulary Appendix.
- F. I. D.

 60. Minor Border Importations.
 61. Cocoa Butter Substitutes.
 62. Guaranty on Imported Products.
 63. Use of the Word "Compound" in Names of Drug Products.
 64. Labeling of Sardines.
- 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- 66. The Use of Sugar in Canned Foods.
 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
- 70. Abuse of Guaranty for Advertising Purposes.
 71. Labeling of Succotash.
 72. Use of Guaranties and Serial Numbers Thereof.
- 73. Interstate Transportation of Imported Meats and Meat-Food Products. F. I. D.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- { 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.
- F. I. D. \{ 80. Glazed Coffee. 81. Labeling of Caramels.
- 82. Labeling of Coffee Produced in the Dutch East Indies. F. I. D.
- F. I. D. 83. The Issue of a Guaranty Based upon a Former Guaranty.
- { 84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.
- 86. Original Packages: Interpretation of Regulation 2 of Rules and Regulations for the Enforcement of the Food and Drugs Act.

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 88.

PRIVATE IMPORTATIONS.

Recently certain shipments of foods and of drugs have been offered for entry into the United States, and an examination has disclosed the fact that they were adulterated or misbranded under the food and drugs act. The shipments were refused entry into the United States, whereupon representations were made to the Department that the materials were for consumption by importers or for free distribution among the friends or employees of the importers, and not for trading purposes, and the Department was requested on this account to allow the entry of the misbranded or adulterated food or drug.

The provisions of the food and drugs act make no distinction between foods and drugs imported for consumption or free distribution by the importer and foods and drugs imported for trading purposes. The law provides that no misbranded or adulterated foods or drugs shall be admitted.

Notice is given that these so-called private importations will be subjected to the same restrictions as ordinary imports.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., February 17, 1908.

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LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. 40. Filing Guaranty. 41. Approval of Labels. 42. Mixing Flours. 43. Relabeling of Goods on Hand.
- F. I. D. 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.
- F. I. D. 46. Fictitious Firm Names; also F. I. D. 46, as amended. 47. Flavoring Extracts. 48. Substances Used in the Preparation of Foods.
- F. I. D. 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906. 50. Imitation Coffee. 51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.
- F. I. D. 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products. 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations. 56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law. 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce. 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes. 59. National Formulary Appendix.
- F. I. D. 60. Minor Border Importations. 61. Cocoa Butter Substitutes. 62. Guaranty on Imported Products. 63. Use of the Word "Compound" in Names of Drug Products. 64. Labeling of Sardines.
- F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.
- F. I. D. 66. The Use of Sugar in Canned Foods. 67. Polishing and Coating Rice. 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
- F. I. D. 70. Abuse of Guaranty for Advertising Purposes. 71. Labeling of Succotash. 72
 Use of Guaranties and Serial Numbers Thereof.
- F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I.D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- F. I. D. 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.
- F. I. D. 80. Glazed Coffee. 81. Labeling of Caramels.
- F. I. D. 82. Labeling of Coffee Produced in the Dutch East Indies.
- F. I. D. 83. The Issue of a Guaranty Based upon a Former Guaranty.
- F. I. D. 84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.
- F. I. D. 86. Original Packages: Interpretation of Regulation 2 of Rules and Regulations for the Enforcement of the Food and Drugs Act.
- F. I. D. 87. Labeling of Corn Sirup.

OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 89.

Amendment to Food Inspection Decision 76, Relating to the Use in Foods of Benzoate of Soda and Sulphur Dioxid.

The question of the addition to food of minute quantities of benzoate of soda and of sulphur dioxid will be certified immediately by the Secretary of Agriculture to the Referee Board of consulting scientific experts.

Pending determination by the Referee Board of the wholesomeness or unwholesomeness of these substances, their use will be allowed under the following restrictions:

Benzoate of soda, in quantities not exceeding one-tenth of one per cent, may be added to those foods in which generally heretofore it has The addition of benzoate of soda shall be plainly been so used. stated upon the label of each package of such food.

No objection will be made to foods which contain the ordinary quantities of sulphur dioxid, if the fact that such foods have been so prepared is plainly stated upon the label of each package.

An abnormal quantity of sulphur dioxid placed in food for the purpose of marketing an excessive moisture content will be regarded as fraudulent adulteration, under the Food and Drugs Act of June 30, 1906, and will be proceeded against accordingly.

Food Inspection Decision No. 76, issued July 13, 1907, is hereby

amended accordingly.

GEO. B. CORTELYOU, Secretary of the Treasury. JAMES WILSON, Secretary of Agriculture. OSCAR S. STRAUS, Secretary of Commerce and Labor.

WASHINGTON, D. C., February 28, 1908.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- 40. Filing Guaranty. F. I. D. 41. Approval of Labels.
 42. Mixing Flours.
 43. Relabeling of Goods on Hand.
- F. I. D. \{ 44. Scope and Purpose of Food Inspection Decisions. Blended Whiskies.

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee. F. I. D.

51. Coloring of Butter and Cheese.52. Form of Label.

53. Formula on the Label of Drugs.

54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.

55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
56. Names to be Employed in Declaring the Amount of the Ingredients as

F. I. D.

Required by the Law.
57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.

58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

59. National Formulary Appendix.

60. Minor Border Importations.
61. Cocoa Butter Substitutes.
62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.
64. Labeling of Sardines. F. I. D.

F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.

66. The Use of Sugar in Canned Foods.

- 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.

70. Abuse of Guaranty for Advertising Purposes.

71. Labeling of Succotash.

72. Use of Guaranties and Serial Numbers Thereof.

F. I. D. F. I. D. 73. Interstate Transportation of Imported Meats and Meat-Food Products.

74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.

F. I. D. The Labeling of Mixtures of Cane and Maple Sirups.

F. I. D.

- 76. Dyes, Chemicals, and Preservatives in Foods.77. Certificate and Control of Dyes Permissible for Use in Coloring Foods F. I. D. and Foodstuffs.
- 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

80. Glazed Coffee.

F. I. D. 81. Labeling of Caramels.

82. Labeling of Coffee Produced in the Dutch East Indies. 83. The Issue of a Guaranty Based upon a Former Guaranty. F. I. D. F. I., D.

84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.

F. I. D. 86. Original Packages: Interpretation of Regulation 2 of Rules and Regulations for the Enforcement of the Food and Drugs Act.

87. Labeling of Corn Sirup. F. I. D. F. I. D. 88. Private Importations.

- 89. Amendment to Food Inspection Decision 76, Relating to the Use in F. I. D. Foods of Benzoate of Soda and Sulphur Dioxid.
- 90. The Labeling of Foods and Medicinal Mixtures for Stock and Poultry. F. I. D.

F. I. D. 91. The Labeling of Mocha Coffee.

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 90.

THE LABELING OF FOODS AND MEDICINAL MIXTURES FOR STOCK AND POULTRY.

The Department has frequently received inquiries in regard to the labeling of bran, of which the following is a fair sample:

Can the screenings of wheat, consisting principally of shrunken seed, etc., be put in the bran and it still be called bran, etc.

Since the above is clearly in violation of those provisions of the law requiring that a food product be true to label, the Department is of the opinion that it will be necessary to label such a mixture as "Bran and Screenings."

It has recently come to the attention of the Department that a number of the cattle and poultry foods sold on the American market contain enough poisonous weed seeds, such as corn cockle and jimson weed (Jamestown weed), to have a more or less toxic effect on poultry, cattle, etc. Poultry and cattle foods which contain poisonous weed seeds in appreciable quantities will be considered as adulterated in accordance with those provisions of the food and drugs act, June 30, 1906, forbidding the presence of poisonous or deleterious ingredients.

The Department has been asked by the manufacturers of medicinal mixtures for poultry, cattle, etc., whether such mixtures may, under the law, be labeled respectively as cattle and poultry foods. It is thought, first, that the words "Cattle Food" or "Poultry Food" should apply to cattle or poultry foods which are not mixed with any condimental or medicinal substance or substances; second, that mixtures of cattle and poultry food materials, with small quantities of condiments, such as anise seed, ginger, capsicum, etc., should be labeled as "Condimental Cattle Food," or "Condimental Poultry Food;" and third, that mixtures of cattle-food materials with medicinal substances, such as arsenic, sulphate of iron (copperas), etc., should not be labeled as foods, but as medicines, or remedies. For example, under the latter ruling, a cattle

food mixed with medicinal substances, such as arsenic, copperas, etc., should be plainly labeled as a remedy, or medicine, so as to differentiate clearly such a substance from a cattle food material unmixed with medicinal agents.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

WASHINGTON, D. C., April 8, 1908.

LIST OF FOOD INSPECTION DECISIONS.

F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.

40. Filing Guaranty.

F. I. D. 41. Approval of Labels.
42. Mixing Flours.
43. Relabeling of Goods on Hand.

F. I. D. { 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.

F. I. D. \{ \begin{aligned} 46, as amended. Fictitious Firm Names. \\ 47. Flavoring Extracts. \\ 48. Substances Used in the Preparation of Foods. \end{aligned}

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee.
51. Coloring of Butter and Cheese.
52. Form of Label.

53. Formula on the Label of Drugs.

54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.

55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredi-

ents as Required by the Law.

- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

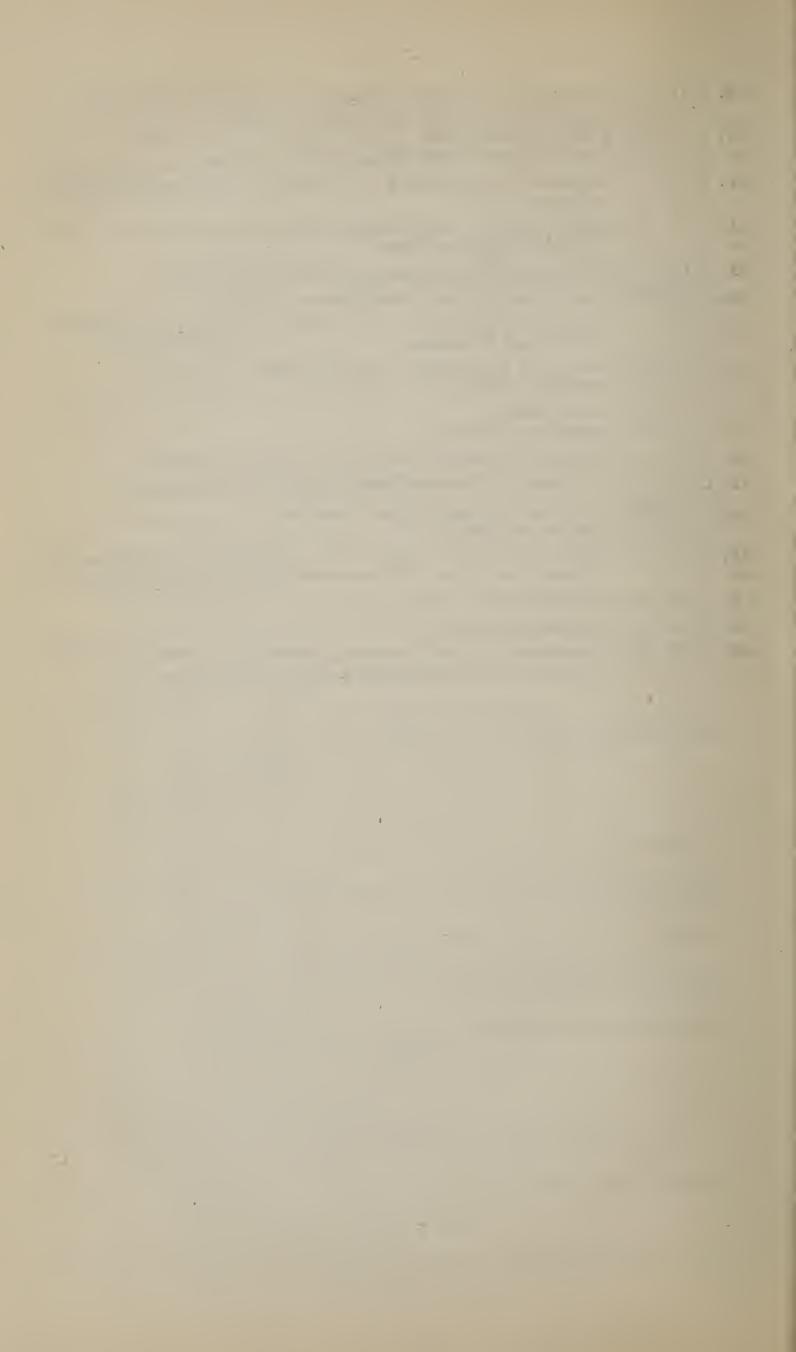
59. National Formulary Appendix.

60. Minor Border Importations.
61. Cocoa Butter Substitutes.
62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.
64. Labeling of Sardines.

F. I. D. 65. The Labeling of Whisky, Blends, Compounds, and Imitations Thereof.

66. The Use of Sugar in Canned Foods.
67. Polishing and Coating Rice.
68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.

- F. I. D. 69. Inspection of Food and Drugs and Identification of Inspectors.
 - 70. Abuse of Guaranty for Advertising Purposes.
- 71. Labeling of Succotash.72. Use of Guaranties and Serial Numbers Thereof.
- 73. Interstate Transportation of Imported Meats and Meat-Food F. I. D. Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- 78. The Use of Labels After October 1, 1907.
 - 79. Collection of Samples.
- F. I. D. \{ 80. Glazed Coffee. 81. Labeling of Caramels.
- 82. Labeling of Coffee Produced in the Dutch East Indies. F. I. D.
- F. I. D. 83. The Issue of a Guaranty Based upon a Former Guaranty.
- 84. Amendment to Regulations 17 and 19.
- \ 85. Labeling of Bitters.
- 86. Original Packages: Interpretation of Regulation 2 of Rules and F. I. D. Regulations for the Enforcement of the Food and Drugs Act.
- F. I. D. 87. Labeling of Corn Sirup.
- F. I. D. 88. Private Importations.
- F. I. D. 89. Amendment to Food Inspection Decision 76, Relating to the Use in Foods of Benzoate of Soda and Sulphur Dioxid.



OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 91.

THE LABELING OF MOCHA COFFEE.

In Food Inspection Decision 82 the Department has indicated its views with respect to the restrictions which it is necessary to place upon the sale of coffees coming from the Dutch East Indies, particularly with respect to such coffees as are known under the name of "Java" coffee.

Among the coffees largely sold upon the American market are those which go by the name of "Mocha." Because of the commercial value of the true Mocha bean, it becomes necessary to indicate the restrictions which must be placed upon the coffees put upon the market and sold under the name of "Mocha."

This matter has been fully investigated and valuable information obtained through the Department of State and from the consul and consular agent in those districts where the true Mocha coffee is grown and whence it is shipped to America and other parts of the world.

The following quotations are taken from the report submitted to the Department of State from the consular agent at Aden under date of January 3, 1908:

The Mocha coffee is produced in that district of southern Arabia known as "Yemen." The latter is a strip of territory commencing at a point on the Red Sea a little north of the port of Hodeidah and extending first southeast to the Strait of Bab-el-Mandeb and then east nearly to Aden. Yemen is, with the exception of a narrow fringe of land along the Red Sea and the Gulf of Aden, rugged and mountainous, embracing innumerable small, elevated valleys of high fertility which are irrigated by waters from the melting snows. This is the coffee district of Arabia.

The term "Mocha" was bestowed upon "Yemen" coffee early in the last century, when Mocha was the port from which all Arabian coffee was shipped. The formation of huge sandbars in the Red Sea off Mocha, practically barring out all shipping, caused the port to be abandoned, and its trade went to Hodeidah and Aden, the bulk of it going to the latter place.

As all of the coffee raised in Yemen may properly be called "Mocha" coffee, all coffee shipped from the port of Hodeidah comes within such classification. With regard to that exported from Aden, however, the case is somewhat different. There is a coffee grown in the upland regions of Abyssinia, in the vicinity of Harrar, which is known locally and to the coffee trade of the world as "Longberry" or "Harrar" in contrast with that of Mocha, which is sometimes called the "Shortberry." The colors of both coffees are practically the same, but the Abyssinian product has a raw, rank, leathery odor, while that of the berry grown in Arabia is delicate and agreeable. The Harrar berry is much longer than the Mocha one, besides being much less regular in form.

While a considerable quantity of Abyssinian coffee is brought to Aden for shipment to Europe and to the United States, it is doubtful whether very little of it, if any, is exported as being Mocha coffee, the local merchants as a rule dealing in both grades of coffee and being very careful of the reputation of their houses. In Aden the only way in which a dishonest dealer might adulterate Mocha coffee would be by mixing it with the Abyssinian article. Such a proceeding would be at best but a clumsy fraud and would be readily and rapidly detected. It is safe to say that practically all of the coffees shipped directly from Hodeidah or Aden to the United States and labeled "Mocha" are pure and unadulterated.

The Board is of the opinion that the term "Mocha," as applied to coffee, should be restricted as indicated in the above communication from the consular agent at Aden, that is, to coffee grown in that part of Arabia to the north and east of Hodeidah, known as Yemen.

> H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., *April* 18, 1908.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
 - 40. Filing Guaranty.
- F. I. D. 41. Approval of Labels.
 42. Mixing Flours.
 43. Relabeling of Goods on Hand.
- F. I. D. { 44. Scope and Purpose of Food Inspection Decisions. 45. Blended Whiskies.
- F. I. D.
- 46, as amended. Fictitious Firm Names.
 47. Flavoring Extracts.
 48. Substances Used in the Preparation of Foods.
 - 49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.
- 50. Imitation Coffee. F. I. D.

F. I. D.

- 51. Coloring of Butter and Cheese.52. Form of Label.53. Formula on the Label of Drugs.
- 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.
- 56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law.
- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.
- 59. National Formulary Appendix.

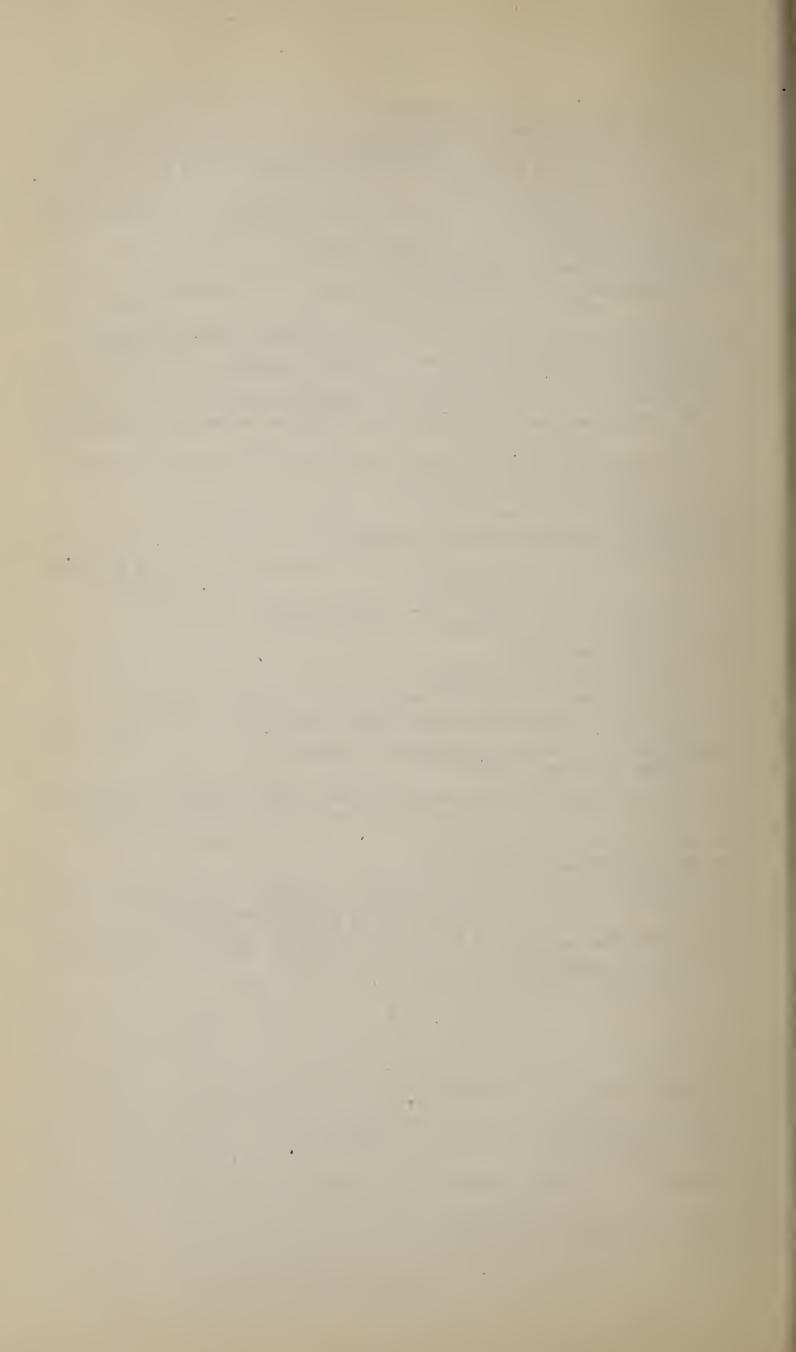
- F. I. D. $\begin{cases} 60. & \text{Minor Border Importations.} \\ 61. & \text{Cocoa Butter Substitutes.} \\ 62. & \text{Guaranty on Imported Products.} \\ 63. & \text{Use of the Word "Compound" in Names of Drug Products.} \\ 64. & \text{Labeling of Sardines.} \end{cases}$

65. The Labeling of Whisky, Blends, Compounds, and Imitations F. I. D. Thereof.

- 66. The Use of Sugar in Canned Foods.
 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- 69. Inspection of Food and Drugs and Identification of Inspectors.

- 70. Abuse of Guaranty for Advertising Purposes.
 71. Labeling of Succotash.
 72. Use of Guaranties and Serial Numbers Thereof.
- 73. Interstate Transportation of Imported Meats and Meat-Food F. I. D. Products.
- 74. Certificates for Imported Meats and Meat-Food Products of Cattle, F. I. D. Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- 76. Dyes, Chemicals, and Preservatives in Foods. F. I. D.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- { 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

- § 80. Glazed Coffee. 81. Labeling of Caramels.
- 82. Labeling of Coffee Produced in the Dutch East Indies. F. I. D.
- 83. The Issue of a Guaranty Based upon a Former Guaranty. F. I. D.
- § 84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.
- F. I. D. 86. Original Packages: Interpretation of Regulation 2 of Rules and Regulations for the Enforcement of the Food and Drugs Act.
- F. I. D. 87. Labeling of Corn Sirup.
- F. I. D. 88. Private Importations.
- F. I. D. 89. Amendment to Food Inspection Decision 76, Relating to the Use in Foods of Benzoate of Soda and Sulphur Dioxid.
- F. I. D. 90. The Labeling of Foods and Medicinal Mixtures for Stock and Poultry.



OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 92.

THE USE OF COPPER SALTS IN THE GREENING OF FOODS.

As provided in Food Inspection Decision 76, the Secretary of Agriculture has considered the question of foods greened with copper salts. It has been decided that foods so treated are not entitled to entry into the United States under the provisions of section 11 of the Food and Drugs Act. Inasmuch as contracts have already been made for the present year's pack, until January 1, 1909, all vegetables greened with copper salts, but which do not contain an excessive amount of copper and which are otherwise suitable for food, will be allowed entry into the United States, if the label bears the statement that sulphate of copper or other copper salts have been used to color the vegetables. On and after January 1, 1909, no foods greened with copper salts will be allowed entry into the United States.

> GEO. B. CORTELYOU, Secretary of the Treasury. JAMES WILSON, Secretary of Agriculture. OSCAR S. STRAUS, Secretary of Commerce and Labor.

Washington, D. C., May 1, 1908.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
- F. I. D. $\begin{cases} 40. & \text{Filing Guaranty.} \\ 41. & \text{Approval of Labels.} \\ 42. & \text{Mixing Flours.} \\ 43. & \text{Relabeling of Goods on Hand.} \end{cases}$

F. I. D. \{ \begin{cases} 44. Scope and Purpose of Food Inspection Decisions. \\ 45. Blended Whiskies. \end{cases}

46, as amended. Fictitious Firm Names.
47. Flavoring Extracts.
48. Substances Used in the Preparation of Foods.

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F. I. D.

46, as amended. Fictitious Firm Names.
47. Flavoring Extracts.
48. Substances Used in the Preparation of Foods.

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee. **F**. I. D.

51. Coloring of Butter and Cheese.52. Form of Label.

- 53. Formula on the Label of Drugs.
- 54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.
- 55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients as Required by the Law.

F. I. D.

- 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

59. National Formulary Appendix.

60. Minor Border Importations.61. Cocoa Butter Substitutes.

62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.
64. Labeling of Sardines.

65. The Labeling of Whisky, Blends, Compounds, and Imitations thereof. F. I. D.

66. The Use of Sugar in Canned Foods.

- 67. Polishing and Coating Rice. 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- 69. Inspection of Food and Drugs and Identification of Inspectors.

70. Abuse of Guaranty for Advertising Purposes.

- 71. Labeling of Succotash.
 72. Use of Guaranties and Serial Numbers Thereof.
- Meats Transportation Imported F. I. D. 73. Interstate of and Meat-Food Products.
- 74. Certificates for Imported Meats and Meat-Food Products of Cattle, F. I. D. Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.
- F. I. D. 76. Dyes, Chemicals, and Preservatives in Foods.
- F. I. D. 77. Certificate and Control of Dyes Permissible for Use in Coloring Foods and Foodstuffs.
- F. I. D. { 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

F. I. D. \{ 80. Glazed Coffee. 81. Labeling of Caramels.

- 82. Labeling of Coffee Produced in the Dutch East Indies. F. I. D.
- F. I. D. 83. The Issue of a Guaranty Based upon a Former Guaranty.
- F. I. D. \{ 84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.
- 86. Original Packages: Interpretation of Regulation 2 of Rules and F. I. D. Regulations for the Enforcement of the Food and Drugs Act.
- F. I. D. 87. Labeling of Corn Sirup.
- F. I. D. 88. Private Importations.

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISIONS 93-95.

93. Amendment to Regulation 34. 94. The Labeling of Medicinal and Table Waters. 95. The Use of Neutral Spirits Distilled from Beet Sugar Molasses in the Preparation of Whisky Compounds and Imitation Whiskies.

(F. I. D. 93.)

AMENDMENT TO REGULATION 34.

Certain classes of articles are offered for entry into this country which, under certain conditions, are ordinarily used for food purposes. The articles in question are used also for technical purposes. An example of such a product is the nutmeg. The mature and sound nutmeg is used for food purposes, while the defective nutmeg is used for the preparation of nutmeg oil, which has a technical use as an odoriferous principle. The defective nutmeg is not fit for food, but, on the other hand, is as well or even better suited for preparing oil.

Under Regulation 34 as it now stands, shipments of products which are ordinarily used for food, but which in the particular case are intended for use in the arts, must be so denatured as to render them unfit for food purposes, and the invoice accompanying the shipment must declare the technical use. It has proved impracticable to have all such products denatured before they are offered for entry into the United States. The Board of Food and Drug Inspection recommends a change in

The Board of Food and Drug Inspection recommends a change in Regulation 34 of Circular 21 of the Office of the Secretary, the amended Regulation to become effective on the date of issue, and to read as follows:

REGULATION 34, DENATURING.

(Section 11.)

Unless otherwise declared on the invoice, all substances ordinarily used as food products will be treated as such. Shipments of substances ordinarily used as food products intended for technical purposes should be accompanied by a declaration stating that fact. Such products should be denatured before entry, but denaturing may be allowed under customs supervision, with the consent of the Secretary of the Treasury, or the Secretary of the Treasury may release such products without denaturing, under such conditions as may preclude the possibility of their use as food products.

H. W. WILEY, F. L. DUNLAP, GEO. P. MCCABE,

Board of Food and Drug Inspection.

Approved:

George B. Cortelyou, Secretary of the Treasury.

James Wilson, Secretary of Agriculture.

Oscar Straus, Secretary of Commerce and Labor.

WASHINGTON, D. C., May 12, 1908.

(F. I. D. 94.)

THE LABELING OF MEDICINAL AND TABLE WATERS.

The Department has received many letters from various water manufacturers and mineral water dealers asking which waters it will be necessary to label as "artificial" or "imitation." It is thought that all manufactured waters should be labeled as either artificial or imitation, the choice of words being left to the manufacturer, and applying to waters contrived by human art and not made in imitation of a natural water, as well as to those so contrived and made in imitation of a natural water. A water which is designated by some name alone, without any characterizing adjective to tell whether it is natural, imitation, or artificial, will be considered a natural water. It is suggested that the words "artificial" or "imitation" be in as large type as the name of the water in question, and on a uniform background.

All waters which, though natural in the beginning, have anything added to them or abstracted from them after they come from source, should either be labeled as "artificial" or should be so labeled as to indicate that certain constituents have been added to or extracted from them. It is suggested that the word "artificial" or the above explanation, as the case may be, should appear in as large type as the name

of the water in question and on a uniform background.

The following examples are explanatory of the above principles. If lithia be added to a natural water, the water should either be labeled as "artificial lithia water," as "water artificially lithiated," or as "water treated with lithia." Again, if carbon dioxid be added to a natural water, whether the carbon dioxid be of the manufactured variety or collected from the spring itself, the water should either be labeled as "artificially carbonated water," water artificially carbonated," water treated with carbon dioxid," or "contains added carbon dioxid."

No water should be labeled as a natural water unless it be in the same condition as at source, without additions or abstractions of any

substance or substances.

No water should be labeled as "medicinal water" unless it contains one or more constituents in sufficient amounts to have a therapeutic effect from these constituents when a reasonable quantity of the water is consumed. No water should be named after a single constituent unless it contains such constituent in sufficient amounts to have a therapeutic effect when a reasonable amount of the water is consumed.

No manufactured water should bear upon the label any design or device that would lead the consumer to believe that the water is a natural one. Among such designs may be mentioned pictures of

springs, fountains, woodland streams, etc.

No water should be characterized by a geographical name which gives a false or misleading idea in regard to the composition of said water. For example, it would not be correct to designate a water as "Lithia water" merely because the water came from Lithia, Fla., or Lithia, Mass.

Manufactured water may be named after a natural water in case the words. "imitation" or "artificial" are used, but such manufactured waters must clearly resemble in chemical composition the natural waters after which they are named.

In accordance with Regulation 19 (c) and (d), no natural American spring water should be named after a foreign spring, unless the name

of the foreign spring has become generic and indicative of the character of the water, except to indicate a type or style, and then only when so qualified that it could not be offered for sale under the name of the foreign spring. In these cases, the State or Territory where the spring is situated should be stated on the principal label.

Inasmuch as mineral waters are largely purchased because of their supposed freedom from contamination, any showing such contamination will be considered as adulterated and therefore in violation of the Food

and Drugs Act.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., *May* 13, 1908.

(F. I. D. 95.)

THE USE OF NEUTRAL SPIRITS DISTILLED FROM BEET SUGAR MOLASSES IN THE PREPARATION OF WHISKY COMPOUNDS AND IMITATION WHISKIES.

The labeling of whisky compounds and imitation whiskies, in the preparation of which neutral spirit distilled from beet sugar molasses has been used, will be governed by the opinion of the Attorney-General, dated May 11, 1908.

James Wilson, Secretary of Agriculture.

Washington, D. C., May 13, 1908.

MAY 11, 1908.

The Honorable The SECRETARY OF AGRICULTURE.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, inclosing copy of a hearing had before you on the subject of spirits distilled from beet sugar molasses, in which you request an expression of my opinion on the question whether it is "allowable under the Food and Drugs Act to use in the place of neutral or silent spirits, prepared from grain, a neutral or silent spirit prepared from fermented beet sugar molasses in the preparation of whisky compounds and imitation whiskies."

In reply, I beg to advise you that there is no provision of the Food and Drugs Act which would prevent the use either in whisky compounds or imitation whiskies of neutral spirits distilled from beet sugar molasses, provided such compound or imitation whisky is properly labeled. Neither do I think that the President's direction to you of April 10, 1907 (F. I. D. 65, p. 2), which was referred to at the hearing, that whisky should be labeled in accordance with my opinion of that date, is to be properly construed as limiting the use of the term "compound of whisky" to cases where the whisky is compounded with a grain distillate.

While it is true that in this direction it is said that "a mixture of straight whisky and ethyl alcohol * * * will be labeled as compound of, or compounded with, pure grain distillate," it is plain that this was only intended to apply to the case of such compounds as are set forth in the opinion whose

enforcement was directed, and that it was not intended either to limit the use of the term "compound of whisky" to the case where the whisky was compounded with a grain distillate, or to require the use of this particular label where another distillate had in fact been used in the compound.

By reference to my opinion of April 10, 1907, whose enforcement was thus directed, it will be seen that while it was stated that "a mixture of whisky with neutral spirit must be deemed a 'compound' and not a 'blend,' although the spirit may be a distillate from the same substance used to furnish the whisky" (F. I. D. 65, p. 13; 26 Opin., 228), and while the particular specimen label of a compound whisky which was suggested related to a compound in which it was "assumed that both the whisky and the alcohol are distilled from grain" (F. I. D. 65, p. 16; 26 Opin., 231), it plainly appears from the entire opinion that the particular kind of compounded whisky which was considered was used for illustrative purposes merely and that it was not intended to limit in any way the use of the term "compound of whisky" to those compounds in which the distillate mixed with the whisky is in itself produced from grain, or to require the use of the specimen label suggested in a case where the mixture is with a distillate produced from other substances than grain.

I am therefore clearly of the opinion that there is nothing whatever either in the Food and Drugs Act itself, or in my former opinion, or in the President's direction for its enforcement, which would limit whisky compounds to cases where the neutral spirits with which the whiskies are mixed are derived from grain distillates, and that the compound to which you refer, if otherwise a genuine compound of whisky, may be properly placed upon the market under the Food and Drugs Act provided it is properly labeled so as to show the true character

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of the other distillate with which the whisky is compounded.

Respectfully,

CHARLES J. BONAPARTE, Attorney-General.

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 96.

SERIAL NUMBER GUARANTY.

As a result of the numerous requests for specific information on various points connected with the filing of general guaranties with the Department, as well as on the use of serial numbers after they have been assigned, the following general instructions bearing on these questions are issued for the guidance of those interested:

- (A) For information regarding the serial number guaranty, see Rules and Regulations for the Enforcement of the Food and Drugs Act (Circular 21), Regulation 9, and Food Inspection Decisions 40, 70, 72, and 83.
- (B) Articles to be guaranteed may be referred to in the guaranty in the following ways:
 - (1) By name.
- (2) By use of general terms. For example, proprietary medicines, extracts, carbonated waters, etc., using the proper terms to cover the line or lines sold.
- (3) By stating in the space reserved for listing articles "all articles which are now or which may hereafter be manufactured, packed, distributed, or sold by _____," in which case the serial number can be used on all foods or drugs, subject to the act, manufactured or owned and sold by the guarantor.
 - (C) The formulæ of preparations are not required to be given.
- (D) The serial number guaranty should not be used on articles not entitled to bear such a guaranty: For example,
- (1) Those of a character which are not included in the definition of articles within the purview of the act as given in section 6 found on page 17 of Circular 21.
- (2) Those subject to the meat inspection law, i. e., meat and meat food products of domestic origin or manufacture derived from cattle, swine, sheep, and goats. (Imported meat and meat food products are subject to the food and drugs act and may be guaranteed by means of a serial number or guaranty.)
 - (3) Those used in the arts and for technical purposes.
- (E) A serial number assigned to a guaranty can be used on any article covered therein to which the act applies. (See B.)

(F) Products not covered by the guaranty on file at the Department can be added thereto by executing another guaranty covering them to be filed as a supplement to the original instrument. (See B.)

(G) The serial number guaranty can be printed either directly on the principal label or appear on a supplemental label or paster at-

tached to the goods.

(H) Only a resident of the United States can make a valid guaranty. (See Food Inspection Decision 62.)

(I) The general guaranty filed with the department must be executed by the person, company, association, or corporation who assumes responsibility for the goods, or by his or its agent thereunto lawfully authorized, and the authority of such agent must plainly be made to appear when the guaranty is offered to be filed.

(J) Full information relative to the signing of the guaranty in-

strument appears at the bottom of the blank form of guaranty.

(K) The signature should be acknowledged before a notary public or other official authorized to administer an oath. The seal of such official should always be affixed to the document.

H. W. WILEY, FREDERICK L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., May 20, 1908.

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OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 97.

"SOAKED CURD" CHEESE.

A change has been introduced in certain portions of the United States in the manufacture of cheese. This change consists in soaking the curd at one stage of the process, in cold water. After drainage, the curd is then salted and put to press.

This treatment is carried on solely for fraudulent purposes. First, it introduces an undue amount of water in the cheese, thus increasing the weight, and, second, it gives a soft texture and an appearance of superior quality, which deceives the purchaser as to its real nature. Cheese thus produced is of inferior quality, for it develops less of the desirable cheese flavor than it otherwise would, and it deteriorates greatly in quality before the curing process is complete.

Under the food and drugs act this type of cheese can not enter interstate commerce nor be sold in the District of Columbia or the Territories under the name of "Cheese" unless this name be further characterized. In the opinion of the Board, this product should be labeled "Soaked Curd Cheese."

> H. W. WILEY. F. L. DUNLAP, GEO. P. MCCABE.

Approved:

Board of Food and Drug Inspection.

W. M. HAYS,

Acting Secretary of Agriculture.

Washington, D. C., October 15, 1908.

LIST OF FOOD INSPECTION DECISIONS.

- F. I. D. 1-39 practically concern imported foods only and were not issued under the food and drugs act, June 30, 1906.
 - 40. Filing Guaranty.

F. I. D. 41. Approval of Labels.
42. Mixing Flours.
43. Relabeling of Goods on Hand.

F. I. D. \{\begin{aligned}
44. Scope and Purpose of Food Inspection Decisions. \\
45. Blended Whiskies.

\[\begin{cases} 46, as amended. Fictitious Firm Names. \\ 47. Flavoring Extracts. \\ 48. Substances Used in the Preparation of Foods. \end{cases}

49. Time Required to Reach Decisions on Different Problems Connected with the Food and Drugs Act, June 30, 1906.

50. Imitation Coffee.

51. Coloring of Butter and Cheese. 52. Form of Label. 53. Formula on the Label of Drugs.

54. Declaration of the Quantity or Proportion of Alcohol Present in Drug Products.

55. Method of Stating Quantity or Proportion of Preparations (Containing Opium, Morphine, etc.) Used in Manufacturing Other Preparations.

56. Names to be Employed in Declaring the Amount of the Ingredients

- as Required by the Law.

 57. Physicians' Prescriptions: The Status of Packages Compounded According to Physicians' Prescriptions and Entering into Interstate Commerce.
- 58. The Labeling of Products Used as Food and Drugs as well as for Technical and Other Purposes.

59. National Formulary Appendix.

F. I. D.

60. Minor Border Importations.
61. Cocoa Butter Substitutes.
62. Guaranty on Imported Products.
63. Use of the Word "Compound" in Names of Drug Products.
64. Labeling of Sardines.

65. The Labeling of Whisky, Blends, Compounds, and Imitations F. I. D. Thereof.

66. The Use of Sugar in Canned Foods.

- 67. Polishing and Coating Rice.
 68. Labeling of Food and Drug Products "Manufactured For," "Prepared For," "Distributed By," etc.
- 69. Inspection of Food and Drugs and Identification of Inspectors. F. I. D.

70. Abuse of Guaranty for Advertising Purposes.
 71. Labeling of Succotash.
 72. Use of Guaranties and Serial Numbers Thereof.

- 73. Interstate Transportation of Imported Meats and Meat-Food F. I. D. Products.
- F. I. D. 74. Certificates for Imported Meats and Meat-Food Products of Cattle, Sheep, Swine, and Goats.
- F. I. D. 75. The Labeling of Mixtures of Cane and Maple Sirups.

76. Dyes, Chemicals, and Preservatives in Foods. F. I. D.

- 77. Certificate and Control of Dyes Permissible for Use in Coloring F. I. D. Foods and Foodstuffs.
- F. I. D. { 78. The Use of Labels After October 1, 1907. 79. Collection of Samples.

F. I. D. \{ 80. Glazed Coffee. 81. Labeling of Caramels.

- 82. Labeling of Coffee Produced in the Dutch East Indies. F. I. D.
- 83. The Issue of a Guaranty Based upon a Former Guaranty. F. I. D.

- F. I. D. { 84. Amendment to Regulations 17 and 19. 85. Labeling of Bitters.
 F. I. D. 86. Original Packages: Interpretation of Regulation 2 of Rules and Regulations for the Enforcement of the Food and Drugs Act.
- F. I. D. 87. Labeling of Corn Sirup.

F. I. D. 88. Private Importations.

- 89. Amendment to Food Inspection Decision 76, Relating to the Use F. I. D. in Foods of Benzoate of Soda and Sulphur Dioxid.
- F. I. D. 90. The Labeling of Foods and Medicinal Mixtures for Stock and Poultry.

F. I. D. 91. The Labeling of Mocha Coffee.

F. I. D. 92. The Use of Copper Salts in the Greening of Foods.

- 93. Amendment to Regulation 34.
 94. The Labeling of Medicinal and Table Waters.
 95. The Use of Neutral Spirits Distilled from Beet Sugar Molasses in the Preparation of Whisky Compounds and Imitation Whiskies.
- F. I. D. 96. Serial Number Guaranty. A5----19

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 98.

THE LABELING OF WHISKY COMPOUNDS.

The labeling of whisky compounds, under the food and drugs act of June 30, 1906, will be governed by the opinion of the Attorney-General, dated December 1, 1908, published herewith.

James Wilson, Secretary of Agriculture.

Washington, D. C., December 4, 1908.

DECEMBER 1, 1908.

The honorable the Secretary of Agriculture.

Sir: I am duly in receipt of your letter of this date. In this you call my attention to a passage in my opinion of April 10, 1907, addressed to the President, which passage is in the words following:

I conclude that a combination of whisky with ethyl alcohol, supposing, of course, that there is enough whisky in it to make it a real compound and not a mere semblance of one, may be fairly called "whisky," provided the name is accompanied by the word "compound" or "compounded," and provided a statement of the presence of another spirit is included in substance in the title—

and you ask me how much whisky there must be in a mixture of whisky and neutral spirits to fairly entitle this mixture to be called a "compound" or "compounded" whisky, or, as stated in your letter, "whisky: a compound of pure grain distillates."

In the passage in question I stated that there must be, in any such a mixture, "enough whisky * * * to make it a real compound and not a mere semblance of one." In the absence of any legislative provision or judicial determination on this subject, the proportion of whisky necessary for the purpose in question can be stated only tentatively and for the time being; and a selection of any particular frac-

tion of the whole as a necessary proportion must be, at least in appearance, somewhat arbitrary. I have, however, very carefully examined the evidence on this subject submitted by your department, and, after full consideration of such evidence, have reached the conclusion that, until better informed in the premises from the action of the Congress or of the courts, this department will not advise a prosecution on the ground of violation of law in using any one of the three labels above suggested or any substantial equivalent therefor when the amount of whisky in the mixture equals or exceeds one-third in volume of the spirituous content; that is to say, in the case you mention, one-third of the whisky and neutral spirits combined.

Very respectfully,

Charles J. Bonaparte,

Attorney-General.

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 99.

CHANGE IN FORM OF GUARANTY LEGEND.

(Amending Section b of Regulation 9.)

Section 9 of the Food and Drugs Act, June 30, 1906, provides that no dealer shall be prosecuted under the provisions of the act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same are not adulterated or misbranded within the meaning of the act. There is a further provision that the guarantor shall, if the goods be adulterated or misbranded, within the meaning of the act, be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer.

Section b of Regulation 9 provides that a general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number, which number should appear on each and every package of goods sold under such guaranty, with the words "Guaranteed under the food and drugs act, June 30, 1906."

It is obvious from a reading of section 9 of the act that the guaranty is in no sense a guaranty by the Government, and that it is merely an assumption of responsibility for the character or labeling of the goods by the manufacturer, jobber, or packer. Yet, notwithstanding this plain fact, attempts have been made by some unscrupulous persons to cause the public to interpret the phrase "Guaranteed under the food and drugs act, June 30, 1906," as a guaranty by the Government that the goods upon which the phrase appears are pure and conform, in all respects, with the provisions of the act. This misrepresentation has been scattered broadcast in prominent advertisements in the press, and by means of circulars and billboard posters. Even in the absence of such misrepresentation there can be no doubt that the phrase, unfortunately, is misleading, and is therefore prohibited by the law and should be changed. The Commissioner of Patents has refused to register trade-marks of which the phrase formed a part, on the ground that it is misleading and under the law can not be registered. The Board of Food and Drug Inspection for some time has realized that the wording of the guaranty legend should be changed, but it has also been mindful of the fact that the manufacturers and jobbers of the United States have, in the aggregate, large sums of money invested in labels and plates, upon which appears the legend in its present form, a form indorsed by the regulations and copied therefrom in good faith by the owners of these labels and plates. Entirely apart from the expense and loss of property, it is a fact that a change in the form of the legend, without due notice, would seriously embarrass business interests, because the printing and lithographing of the new labels will require considerable time.

As a solution of the question, the Board recommends that the guaranty legend be changed so as to show plainly that the guaranty is that of the manufacturer and not of the Government, that the old form or labels now in use representing guaranties already filed with the Department of Agriculture shall be recognized for a term of two years, and that for all guaranties filed with the Department of Agriculture on and after January 1, 1909, the guaranty legend shall read "Guaranteed by [insert name of guarantor] under the food and drugs act, June 30, 1906."

Accordingly the following amendment is proposed to Regulation 9 of the Rules and Regulations for the Enforcement of the Food and Drugs Act.

Section b of Regulation 9 is hereby amended to read as follows:

(b) A general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty with the words "Guaranteed by [insert name of guarantor] under the food and drugs act, June 30, 1906."

This amendment shall become and be effective on and after January 1, 1909. Labels bearing the form of guaranty legend provided in the original regulations and representing guaranties now on file with the Department of Agriculture may be used for a period of two years, but it is suggested that, as new labels are prepared, the change in the form of guaranty legend should be made.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

Geo. B. Cortelyou,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Oscar S. Straus,

Secretary of Commerce and Labor.

Washington, D. C., December 8, 1908.

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 100.

BLEACHED FLOUR.

Flour bleached with nitrogen peroxid, as affected by the Food and Drugs Act of June 30, 1906, has been made the subject of a careful investigation extending over several months.

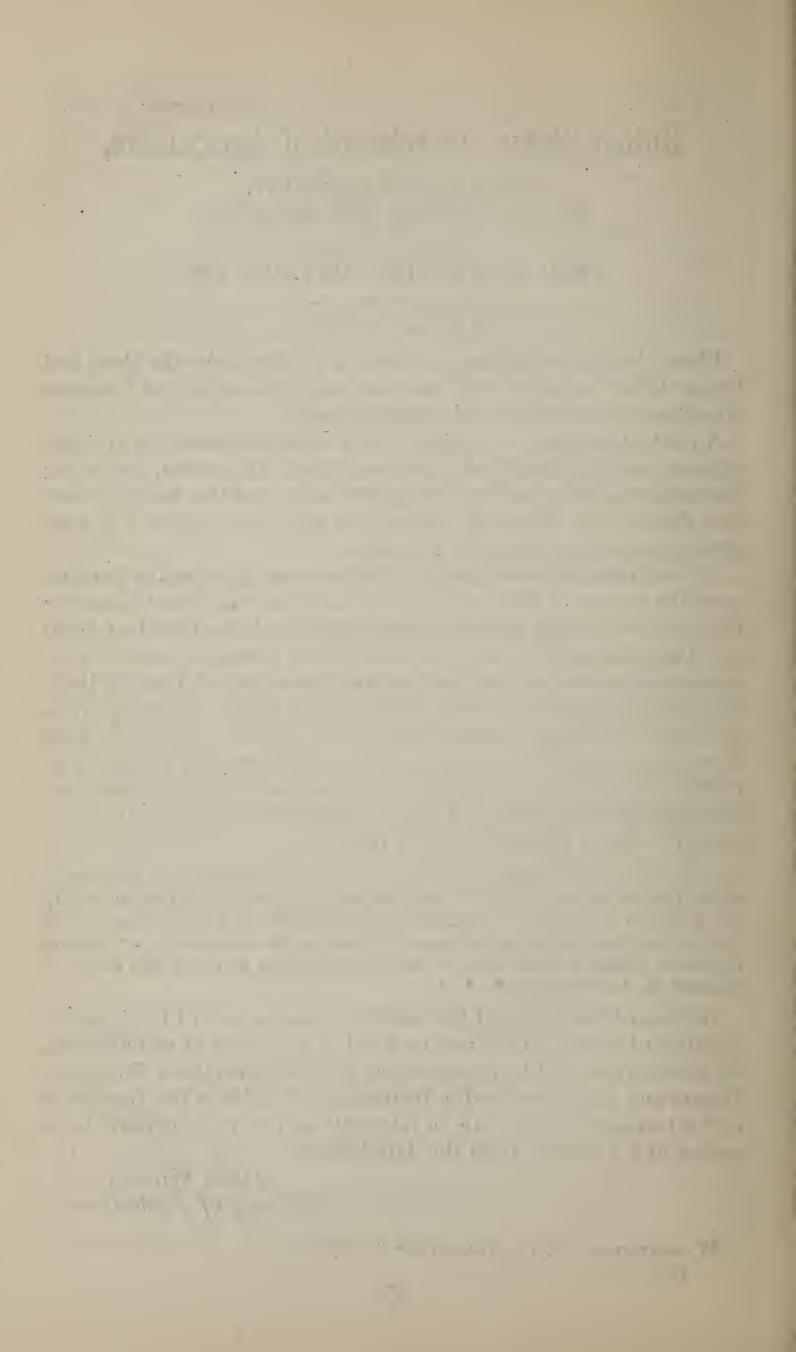
A public hearing on this subject was held by the Secretary of Agriculture, and the Board of Food and Drug Inspection, beginning November 18, 1908, and continuing five days. At this hearing those who favored the bleaching process and those who opposed it were given equal opportunities to be heard.

It is my opinion, based upon all the testimony given at the hearing, upon the reports of those who have investigated the subject, upon the literature, and upon the unanimous opinion of the Board of Food and Drug Inspection, that flour bleached by nitrogen peroxid is an adulterated product under the Food and Drugs Act of June 30, 1906; that the character of the adulteration is such that no statement upon the label will bring bleached flour within the law; and that such flour can not legally be made or sold in the District of Columbia or in the Territories; or be transported or sold in interstate commerce; or be transported or sold in foreign commerce except under that portion of section 2 of the law which reads:

* * * Provided, That no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; * * *.

In view of the extent of the bleaching process and of the immense quantity of bleached flour now on hand or in process of manufacture, no prosecutions will be recommended by this Department for manufacture and sale thereof in the District of Columbia or the Territories or for transportation or sale in interstate or foreign commerce, for a period of six months from the date hereof.

James Wilson, Secretary of Agriculture.



OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 101.

BENZOATE OF SODA.

Frequent inquiries have been received by the Department in regard to the use of benzoate of soda in foods. The following is typical of this class of inquiries:

In F. I. D. 89, the position of the National authorities in regard to the use of benzoate of soda is to allow its use in food, pending the report of the Referee Board of Consulting Scientific Experts. Based upon Bulletin 84, Part IV, of the Bureau of Chemistry, issued subsequent to F. I. D. 89, certain manufacturers of food products are representing to the officials of the States, charged with the enforcement of food laws, and to the consuming public generally, that the U. S. Government has condemned the use of benzoate in foods. We write to ask the position of the Department on this subject.

The Department has not changed the position outlined in Food Inspection Decision 89. Pending the determination by the Referee Board of the wholesomeness or unwholesomeness of benzoate of soda, its use will be allowed under the following restrictions:

Benzoate of soda, in quantities not exceeding one-tenth of one per cent, may be added to those foods in which generally heretofore it has been used.

The addition of benzoate of soda shall be plainly stated upon the label of each package of such food.

F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture,

Washington, D. C., December 18, 1908.

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OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 102.

ENTRY OF VEGETABLES GREENED WITH COPPER SALTS.

Until further notice, vegetables greened with copper salts, but which do not contain an excessive amount of copper and which are otherwise suitable for food, will be allowed entry into the United States, if the label bears the statement that sulphate of copper or other copper salts have been used to color the vegetables.

Food Inspection Decision No. 92 is amended accordingly.

Geo. B. Cortelyou, Secretary of the Treasury.

James Wilson,
Secretary of Agriculture.

Oscar S. Straus,
Secretary of Commerce and Labor.

Washington, D. C., December 23, 1908. 17938°—11

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OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 103.

THE LABELING OF TURPENTINE.

The Department has received a number of letters with reference to the proper labeling of the product generally known as "wood turpentine," etc., obtained by steam distilling or destructively distilling woods. Food Inspection Decision 58 recognizes that—

Products used in the arts and for technical purposes are not subject to the Food and Drugs Act * * * when plainly marked so as to indicate that they are not to be employed for food or medicinal purposes.

It is held, therefore, that when wood turpentine is labeled "Not for Medicinal Use," etc., it is not subject to the food and drugs act. When not so labeled it is in violation of section 7 of the food and drugs act unless labeled "wood" or "stump" turpentine. Articles labeled "turpentine," "spirits of turpentine," or "gum turpentine," etc., must comply with pharmacopæial requirements; that is, they must be light oils of certain properties made by distilling the oleoresin of various species of Pinus. The word "wood" or "stump" should be in the same type and on the same background as the word "turpentine," thus being given equal prominence.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., January 22, 1909.

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 104.

AMENDMENT TO FOOD INSPECTION DECISIONS NO. 76 AND NO. 89, RELATING TO THE USE IN FOODS OF BENZOATE OF SODA.

The Referee Board of Consulting Scientific Experts, composed of Dr. Ira Remsen, Dr. Russell H. Chittenden, Dr. John H. Long, Dr. Alonzo E. Taylor, and Dr. C. A. Herter, have reported upon the use of benzoate of soda in foods. The Board reports, as a result of three extensive and exhaustive investigations, that benzoate of soda mixed with food is not deleterious or poisonous and is not injurious to health. The summary of the report of the Referee Board is published herewith.

It having been determined that benzoate of soda mixed with food is not deleterious or poisonous and is not injurious to health, no objection will be raised under the Food and Drugs Act to the use in food of benzoate of soda, provided that each container or package of such food is plainly labeled to show the presence and amount of benzoate of soda.

Food Inspection Decisions 76 and 89 are amended accordingly.

George B. Cortelyou,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Oscar S. Straus,

Secretary of Commerce and Labor.

THE INFLUENCE OF SODIUM BENZOATE ON THE NUTRITION AND HEALTH OF MAN.

Of the questions referred to this Board the first to engage our attention have been the following:

(1) "Does a food to which there has been added benzoic acid, or any of its salts, contain any added poisonous or other added deleterious ingredient which

¹ Dr. Alonzo E. Taylor, Professor in the University of California, a member of this Board, owing to absence in Europe, has not been able to participate in the investigations embodied in this report.

may render the said food injurious to health? (a) In large quantities? (b) In small quantities?"

(2) "If benzoic acid or any of its salts be mixed or packed with a food, is the quality or strength of said food thereby reduced, lowered, or injuriously affected?

(a) In large quantities? (b) In small quantities?"

To obtain satisfactory answers to these questions the Board has felt it necessary to carry through a careful investigation of the effect of benzoic acid or some one of its salts on the nutrition and general health of man. A thorough study of the literature giving the results of work done by various investigators on the physiological effects of benzoic acid and its salts, together with a study of reported clinical and medical observations, therapeutic usage, etc., have made it apparent that additional work was needed to render possible a conclusive answer to the above questions.

With a view to limiting the scope of the work, while at the same time meeting all practical requirements, our investigation, with the consent of the Secretary of Agriculture, has been confined to a study of the effect of the sodium salt of benzoic acid, viz, sodium benzoate.

To make this experimental inquiry as thorough as possible, and to minimize the personal equation, three independent investigations have been carried out—one at the medical school of Northwestern University, in Chicago, under the charge of Prof. John H. Long, of that institution; a second at the private laboratory of Prof. Christian A. Herter, of Columbia University, New York City; and the third at the Sheffield Scientific School of Yale University, in charge of Prof. Russell H. Chittenden.

The same general plan of procedure was followed in all three experiments. A certain number of healthy young men were selected as subjects, and during a period of four months these men, under definite conditions of diet, etc., with and without sodium benzoate, were subjected to thorough clinical and medical observation, while the daily food and the excretions were carefully analyzed, and otherwise studied, and comparison made of the clinical, chemical, bacteriological, and other data collected. (For details, see the individual reports.) In this manner material has been brought together which makes possible conclusions regarding the effect of small and large doses of sodium benzoate upon the human system.

In fixing upon the amount of sodium benzoate that should constitute a "small dose," we have adopted 0.3 gram of the salt per day. Manufacturers of food products, which in their view require the use of a preservative, are in general content with 0.1 per cent of sodium benzoate. This would mean that in the eating of such a preserved food the consumer would need to take 300 grams per day, or nearly two-thirds of a pound of preserved food to ingest an amount of benzoate equal to our minimal daily dosage. Looked at from this point of view, our dosage of 0.3 gram per day seemed a fair amount for a "small dose," one that would clearly suffice to show any effect that small doses of the salt might exert, especially if continued for a considerable length of time. In all these four experiments this daily dosage was continued for a period of about two months. Under "large dose" was included quantities of sodium benzoate ranging from 0.6 gram to 4 grams per day. Such a daily dosage was continued for a period of one month. In a few instances somewhat larger doses were employed.

As the amount and character of the daily diet exert a well-known influence upon many of the metabolic or nutritive changes of the body, as well as upon the bacterial flora of the intestines, attention is called to the fact that the three investigations differed from each other in the amount of protein food consumed daily, thereby introducing a distinctive feature which tends to broaden the conditions under which the experiments were conducted.

The conclusions reached as a result of the individual investigations are given at length in the separate reports herewith presented, together with all of the data upon which these conclusions are based.

The fact should be emphasized that the results obtained from the three separate investigations are in close agreement in all essential features.

The main general conclusions reached by the Referee Board are as follows:

First.—Sodium benzoate in small doses (under 0.5 gram per day) mixed with the food is without deleterious or poisonous action and is not injurious to health.

Second.—Sodium benzoate in large doses (up to 4 grams per day) mixed with the food has not been found to exert any deleterious effect on the general health, nor to act as a poison in the general acceptation of the term. In some directions there were slight modifications in certain physiological processes, the exact significance of which modifications is not known.

Third—The admixture of sodium benzoate with food in small or large doses has not been found to injuriously affect or impair the quality or nutritive value of such food.

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IRA REMSEN, Chairman.
RUSSELL H. CHITTENDEN,
JOHN H. LONG,
CHRISTIAN A. HERTER,
Referee Board of Consulting Scientific Experts.

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OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 105.

THE LABELING OF CANNED SALMON AND WHITEFISH.

Many inquiries have been made of the Department regarding the nomenclature commonly employed in designating canned salmon. It is stated that inferior species of salmon are frequently canned and labeled with some name which is understood by the trade to indicate the presence of fish of an inferior variety but which is not so understood by the consumer; as, for instance, "Alaska Salmon." The Department is informed by the Bureau of Fisheries that the species of salmon in the United States are as follows:

- 1. Oncorhynchus nerka. Sockeye or sockey salmon, blueback salmon, red salmon, redfish, or nerka salmon.
- 2. Oncorhynchus tschawytscha. Chinook salmon, king salmon, quinnat salmon, tyee salmon, or spring salmon.
- 3. Oncorhynchus gorbuscha. Humpback salmon, pink salmon, or gorbuscha salmon.
 - 4. Oncorhynchus kitsutch. Coho salmon, silver salmon, or medium red.
- 5. Oncorhynchus keta. Calico salmon, keta salmon, dog salmon, or chum salmon.
- 6. Salmo gairdneri. Steelhead salmon, steelhead, hardhead, winter salmon, salmon trout, or square-tailed trout.
 - 7. Salmo salar. Atlantic salmon.

Two additional species of landlocked salmon exist in certain New England and Canadian lakes. Neither of these nor the Atlantic salmon is ever canned. Considering this fact, and the further fact that many packers put up humpback and dog salmon under fancy names and thus sell them to consumers who may believe them to be of superior varieties, it is held that canned salmon should be labeled with one of the common names mentioned above as belonging to the species of fish canned.

A similar question has frequently been raised regarding whitefish. A fish designated as Argyrosomus artedi, usually called lake herring or cisco, is put on the market at times as "family whitefish." The

following is quoted from a communication from the Bureau of Fisheries:

The whitefish tribe in America has numerous representatives, and at least 12 species are regularly caught for market, and others will doubtless in time acquire economic importance. Those now taken are:

Common whitefish of Lake Ontario and Lake Erie, Coregonus albus; common whitefish of Lake Huron, Lake Michigan, Lake Superior, Lake of the Woods, Lake Winnipeg, etc., Coregonus elupeiformis; Rocky Mountain whitefish, Coregonus williamsoni; broad whitefish or Alaska whitefish, Coregonus kennicotti; Menominee whitefish or round whitefish, Coregonus quadrilateralis; Lake herring, or cisco, Argyrosomus artedi; jumbo herring, or Erie cisco, Argyrosomus eriensis; Huron cisco or herring, Argyrosomus huronius; moon-eye, or chub, Argyrosomus hoyi; longjaw whitefish, or bloater, Argyrosomus prognathus; longjaw, of Lake Superior, Argyrosomus zenithicus; blackfin or bluefin whitefish, Argyrosomus nigripinnis; tullibee whitefish, Argyrosomus tullibee.

To most of these species the name "whitefish," with a qualifying word, is strictly applicable; but there is a wide range in food value, and to permit the sale of most of them as plain "whitefish" would be unjust to the public. The Bureau does not know that this general question has come before your Board, or that you wish to consider it at this time, but sooner or later it will be necessary to render a decision, and at any time it may be brought to your attention because of cases arising in the Washington (D. C.) market, where one of the commonest and best of the fish foods is "smoked whitefish"—consisting of any one of three or four species of Coregonus and Argyrosomus, none of them clupciformis or albus. Under these circumstances it would appear to this Bureau to be proper and feasible to require the different kinds of preserved whitefish to be designated by their qualifying names. The most appropriate name for "family whitefish" is lake herring or cisco; but whitefish as here used would mean, or would be intended to mean, the common whitefish, the best of the tribe.

In harmony with the opinion of the Bureau of Fisheries, the Board holds that the term "whitefish" should be applied only to the common whitefishes, Coregonus albus and Coregonus clupeiformis, unless prefaced by the name of the particular species of whitefish employed. The fishes commonly known to the fishermen and the trade as "lake herring" and "cisco" should be so called, with or without qualifying names, but should not be designated "whitefish."

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., February 17, 1909.

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OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 106.

AMENDMENT TO FOOD INSPECTION DECISION 77.

(A definition of the terms "Batch" and "Mixtures" as used therein.)

The definition of the term "batch" as given on page 4, lines 12 to 14 of Food Inspection Decision 77, is hereby extended to include also the contents of any one package, cask, or other container holding 500 pounds or less of dye, even though the contents of such package, cask, or container has not undergone the same treatment at the same time and the same place as a unit.

The word "mixtures" as used on page 3, line 15 from the bottom, and following, of Food Inspection Decision 77 is hereby declared to mean not only such mixtures as consist wholly of certified coal tar dyes but also those which contain one or more certified coal tar dyes (and no other coal tar dye or dyes) in combination with other components, constituents, or ingredients not coal tar dyes, which other components, constituents, or ingredients are in and of themselves or in the combination used harmless and not detrimental to health or are not prohibited for use in food products; the exact formula of such mixtures, including all of the components, constituents, or ingredients, or other parts of the mixture, together with a statement of the total weight of mixture so made, must be deposited with the Secretary of Agriculture and a one (1) pound sample thereof must be sent to the Secretary of Agriculture, but such formula need not appear on the label; in lieu of which may appear the legend "Made from certified lots Number_____, etc.," and no mention need be made of any constituent or constituents other than of the certified coal tar dyes employed.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., March 19, 1909. 7187°—13 and the grown of a first the second

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United States Department of Agriculture, office of the secretary,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 107.

DECISION OF THE ATTORNEY-GENERAL IN REGARD TO THE LEGALITY
OF THE REFEREE BOARD.

The decision of the Attorney-General in regard to the legality of the Referee Board is hereby promulgated as Food Inspection Decision No. 107.

James Wilson, Secretary of Agriculture.

Washington, D. C., April 22, 1909.

DEPARTMENT OF JUSTICE,

Washington, April 14, 1909.

The Honorable The Secretary of Agriculture.

SIR: I am in receipt of your favor of the 23d ultimo, asking my opinion with respect to (1) the legality of the appointment by you of five scientific consulting experts to give you necessary advice upon questions arising in the enforcement of the Food and Drugs Act, June 30, 1906, whose salaries and expenses you have directed to be paid from the appropriation "Laboratory, Department of Agriculture" (34 Stat., 1271); and inquiring specifically (2) whether you were, on February 20, 1908, authorized to form these five consulting experts into a board, and to pay the expenses incident to the investigations made by such board at your direction, including the compensation of necessary laboratory helpers, the purchase of material, etc., and (3) whether section 9 of the sundry civil act, approved March 4, 1909, or any subsequent legislation has impaired the legal status of the appointments and of the organization of the board, or affected the right of the experts so appointed and organized, to receive compensation for their individual services, or affected your powers to appoint assistants, laboratory helpers, etc., to assist the members of the board, and to incur expenses for necessary material, etc., all to be paid until June 30, 1909, from the

appropriation "Laboratory, Bureau of Chemistry, 1909" (35 Stat., 260), and subsequently from the appropriation "General Expenses, Bureau of Chemistry, 1910" (act entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and ten," approved March 4, 1909).

1. As to the legality of the appointment. The Food and Drugs Act, after prohibiting the introduction into any State or Territory, or the District of Columbia, from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of the act, enacts in section 2:

That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination, of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

Section 3 enacts:

That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney * * *.

The statutes of the United States do not provide for the creation of the Bureau of Chemistry in the Department of Agriculture. The existence of such Bureau is recognized in the appropriation acts, and in the act entitled "An act to make appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and eight" (34 Stat., 1271), under the head of "Bureau of Chemistry" appropriations are made for the salaries of "One chemist, who shall be chief of Bureau," and a certain number of clerks, laborers, messengers, etc., after which, under the subheading of "Laboratory, Department of Agriculture," a lump sum appropriation was made for "necessary

expenses in conducting investigations in this Bureau, including * * * work in such investigations, in the city of Washington and elsewhere * * *; for the employment of additional assistants and chemists, when necessary * * *; to investigate the composition, adulteration, and false labeling, or false branding of foods, drugs, beverages, condiments, and ingredients of such articles, when deemed by the Secretary of Agriculture advisable * * *. For all expenses necessary to carry into effect * * * [the Food and Drugs Act] * * * employing such assistants, clerks, and other persons as the Secretary of Agriculture may consider necessary for the purposes named * * *." The act of March 4, 1907 (34 Stat., 1280), passed at the same session with the appropriation act above referred to, expressly authorizes the Secretary of Agriculture—

to make such appointments, promotions, and changes in the salaries, to be paid out of the lump funds of the several bureaus, divisions, and offices of the Department as may be for the best interests of the service: Provided, That the maximum salary of any classified scientific investigator in the city of Washington, or other employee engaged in scientific work, shall not exceed three thousand five hundred dollars per annum. And the Secretary of Agriculture is hereby authorized and directed to pay the salary of each employee from the roll of the bureau, independent division, or office in which the employee is working, and no other: Provided, however, That details may be made from or to the office of the Secretary when necessary and the services of the person whom it is proposed to detail are not required in that office; and he is further authorized and directed to submit to Congress each year a statement covering all appointments, promotions, or other changes made in the salaries paid from lump funds, giving in each case the title, salary, and amount of such change or changes, together with reasons therefor. (34 Stat., 1280.)

Pursuant to the provisions of section 2 of the Food and Drugs Act, the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor, on October 17, 1906, promulgated certain rules and regulations for carrying out the provisions of the act. Regulations 3 and 4 dealt with the collection of samples and the methods of analysis. Regulation 5, "Hearings," is as follows:

- (a) When the examination or analysis shows that the provisions of the Food and Drugs Act, June 30, 1906, have been violated, notice of that fact, together with a copy of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in the Food and Drugs Act, June 30, 1906, and a date shall be fixed at which such party or parties may be heard before the Secretary of Agriculture or such other official connected with the food and drug inspection service as may be commissioned by him for that purpose. The hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorney and may propound proper interrogatories and submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. The Secretary of Agriculture may order a reexamination of the sample or have new samples drawn for further examination.
- (b) If the examination or analysis be found correct the Secretary of Agriculture shall give notice to the United States district attorney as prescribed * * *.

The appropriation act of 1908 (35 Stats., 251, 261) made appropriations for the fiscal year ending June 30, 1909, and contained provisions in the lump sum appropriation for "Laboratory, Department of Agriculture" similar to those above quoted from the act of 1907, except that the sentence "for the employment of additional assistants and chemists" was not included in the enumeration of the objects for which the lump sum appropriation was made.

The appropriation act of 1909 (Public No. 330) contains similar provisions to those above cited from the act of 1908. Under these acts, I am clearly of the opinion that the Secretary of Agriculture was empowered to employ in the Bureau of Chemistry such additional assistants and chemists as he should deem necessary to investigate the composition, adulteration, and false labeling, or false branding of foods, drugs, beverages, condiments, and ingredients of such articles, when deemed advisable by him, and such assistants "and other persons" as he might deem necessary to carry into effect the Food and Drugs Act.

The form of appointment which you made, which accompanies your letter, shows that you appointed each of certain persons "consulting scientific expert to the Secretary of Agriculture, to aid in enforcing the provisions of the" Food and Drugs Act, in the Department of Agriculture at a salary of \$25 per day, for days actually employed, to be paid from the appropriation "Laboratory, Department of Agriculture, General Expenses, Bureau of Chemistry," to perform such duties as should be required by the Secretary. While the form of appointment does not expressly specify that the expert is employed as a part of the Bureau of Chemistry, that fact is implied from the specification of the fund from which he is to be paid. In my opinion these appointments were expressly authorized by the acts of Congress referred to.

2. You further inform me that you organized the five persons so appointed into a board called the "Referee Board," and that you imposed upon them the duty to consider and report to you upon the wholesomeness, or the deleterious character of such foods, or of such articles used in foods as you might refer to them. I do not understand from your communication that you conferred upon this so-called Referee Their sole function was to investigate and report to Board any power. you, and their detail to your office is justified in the provision of the act of March 4, 1907, above quoted. The purposes for the employment of these gentlemen, and the organization of them by you into a board, are set forth in your letter. You point out that it was to enable you to have recourse to the disinterested and unbiased advice of eminent and expert chemists whenever a serious conflict of opinion may arise as to the deleteriousness of any particular article or substance added to food. It is, of course, apparent that in the administration of a statute of such far-reaching effect as the Food and Drugs Act, the ordinary investigation and conclusions of the Bureau may be disputed by interested par-

ties, and section 4 of the act provides for a rehearing by the Secretary of Agriculture whenever the conclusion of the Bureau is disputed. Secretary would naturally desire to reach a right conclusion as to such matters and not subject the owners of articles affected by the ruling to litigation if any error should have been committed by the Bureau, and Congress would seem to have had that in mind in providing in the lump sum appropriations of 1907 and 1908, for the employment of "such assistants, clerks, and other persons, as the Secretary of Agriculture may consider necessary for the purposes named," i. e., the investigation of the composition, adulteration, and false labeling, or false branding of foods, drugs, beverages, etc., when deemed by him advisable. Your right to appoint any one of these men for that purpose can scarcely be seriously disputed under the provisions of the act above referred to, and, in my opinion, you were entirely justified in directing them to confer and act as a committee or board in advising you with respect to the enforcement of the act.

3. The act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and ten, and for other purposes," approved March 4, 1909 (Public No. 328), contains the following provision:

Section 9. That hereafter no part of the public moneys, or of any appropriation heretofore or hereafter made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed by detail, hereafter or heretofore made, or otherwise personal services from any executive department or other government establishment in connection with any such commission, council, board, or other similar body.

You inform me that since this enactment a question has been raised as to your right to cause payments to be made to the above-mentioned experts, and you ask my opinion as to whether or not such objections are well founded. In my opinion this section last quoted does not repeal the provisions of the appropriation act passed at the same session, authorizing the Secretary of Agriculture to employ "such assistants, clerks, and other persons as he may consider necessary" to enable him to carry into effect the provisions of the Food and Drugs Act, nor to submit to a number of persons appointed pursuant to that act, to consider jointly as a committee or board, and report to him for his information, any question upon which he is by law required to take action arising under that act. The commissions or boards referred to in section 9 of the act of March 4, 1909, are commissions or boards constituted without authority of law, and I can not conceive that it could ever be construed to prohibit the head of a Department from submitting to the concurrent investigation and report of several employees of his Department any question which he might submit for investigation to any one of them. Inasmuch, therefore, as the employment of experts of the character referred to by you is authorized by law, and appropriations made out of which they may be paid for their services, as above set forth, I am of the opinion that neither section 9 of the sundry civil act, approved March 4, 1909, above referred to, nor any other legislation to which my attention has been called, has affected your right to employ such experts or submit to their joint investigation and report, any question of fact affecting the adulteration or misbranding of articles concerning which any party from whom such articles have been obtained is entitled to be given an opportunity to be heard under the provisions of section 4 of the Food and Drugs Act.

Respectfully,

GEO. W. WICKERSHAM,

Attorney-General.





OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 108.

IMPORTATION OF COFFEE.

The Department has recently investigated the sale and shipment, within the jurisdicton of the Food and Drugs Act of June 30, 1906, of decomposed, imperfect and damaged coffee. A public hearing on this subject was held by the Board of Food and Drug Inspection on December 15, 1908, at which an opportunity to be heard was given to the trade and to the public.

As a result of the investigation and the evidence adduced at the hearing, it is announced that the product ordinarily known as "Black Jack," consisting of rotton or decomposed berries, is regarded by the Department as injurious to health and the Food and Drugs Act forbids its shipment or sale within the jurisdiction of the said act. Coffee which is damaged by water during shipment, or which has acquired a permanently offensive odor because of its proximity to hides or other material of objectionable odor, is considered by the Department to come within the phrase "filthy, decomposed, or putrid," within the meaning of that phrase as used in the Food and Drugs Act, and its shipment or sale as hereinbefore stated is, therefore, held to be forbidden. Immature berries, ordinarily known as "Quakers," are dead beans without pronounced smell or taste. They have not the characteristics of coffee, and, in the opinion of the Department, their shipment or sale as coffee within the jurisdiction of the act is in violation thereof.

It is recognized that the ordinary coffees of commerce usually contain small quantities of these inhibited products, and no action will be taken in regard to the shipment or sale of the recognized graded coffees of commerce because of the small amount of these substances which may be present. In determining the present action of the Department on any particular lot as to whether it contains more than the ordinary small quantities of the inhibited products, coffee graded as No. 8, on the New York Coffee Exchange, will be taken as a standard.

Screenings consisting of inferior or broken berries, of stones, sticks, dirt, etc., should not be sold as coffee even in a ground condition. This product should be designated as "Coffee screenings."

F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., June 15, 1909.

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OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 109.

THE LABELING OF WINES.

On June 30, 1909, a hearing was held before the Secretary of Agriculture and the Board of Food and Drug Inspection on the labeling of Ohio and Missouri wines. After giving full consideration to the data submitted, the Board is of the opinion that the term "wine" without modification is an appropriate name solely for the product made from the normal alcoholic fermentation of the juice of sound ripe grapes, without addition or abstraction, either prior or subsequent to fermentation, except as such may occur in the usual cellar treatment for clarifying and aging. The addition of water or sugar, or both, to the must prior to fermentation is considered improper, and a product so treated should not be called "wine" without further characterizing it. A fermented beverage prepared from grape must by addition of sugar would properly be called a "sugar wine," or the product may be labeled in such a fashion as to clearly indicate that it is not made from the untreated grape must, but with the The consumer is, under the Food and Drugs Act, addition of sugar. entitled to know the character of the product he buys.

Evidence was offered on the preparation of "wine" from the marc. In these cases it appeared customary to add both water and sugar to the marc and sometimes to use saccharin, coloring matter, preservatives, etc., to make a salable article.

In the opinion of the Board no beverage can be made from the marc of grapes which is entitled to be called "wine" however further characterized, unless it be by the word "imitation." The words "Pomace Wine" are not satisfactory, since the product is not a wine in any sense, but only an "imitation wine" and should be so labeled.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

W. M. HAYS,

Acting Secretary of Agriculture.

Washington, D. C., August 21, 1909. 7145°—13



OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 110.

SHELLFISH.

The Department has investigated the preparation and shipment of oysters, clams, and other shellfish. A public hearing on this subject was held by the Board of Food and Drug Inspection on May 20, 1909. At this hearing, growers, packers, dealers, and the public were afforded an opportunity to be heard.

It is unlawful to ship or to sell in interstate commerce oysters or other shellfish taken from insanitary or polluted beds. The pollution of oysters with sewage can readily be detected by bacteriological examination, and such polluted oysters or other shellfish are adulterated under section 7 of the Food and Drugs Act of June 30, 1906, in that they contain an added "poisonous or other added deleterious ingredient which may render such article injurious to health."

Such articles are likewise adulterated under section 7, in the case of foods because they consist "in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance."

It is unlawful to ship or to sell in interstate commerce oysters or other shellfish which have become polluted because of packing under insanitary conditions or being placed in unclean receptacles. In order to prevent pollution during the packing or shipment of oysters, it is necessary to give proper attention to the sanitary condition of the establishment in which they are packed and to use only receptacles which have been thoroughly cleansed as soon as emptied. In order to prevent the possibility of contamination, it is desirable that such containers be sterilized before using.

It is unlawful to ship or to sell in interstate commerce oysters or other shellfish which have been subjected to "floating" or "drinking" in brackish water, or water containing less salt than that in which they are grown. Such food is adulterated under section 7 of the law because a substance "has been mixed and packed with it so as to

reduce or lower or injuriously affect its quality or strength." There can be no objection to "drinking" shellfish in unpolluted water of the same salt content as that from which they have been removed. Attention is called, however, to the dangers resulting from "drinking" shellfish near polluted fresh water streams and near other sources of pollution.

It is unlawful to ship or to sell in interstate commerce shucked oysters to which water has been added, either directly or in the form of melted ice. Such food is adulterated under section 7 of the act because a "substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength," and also because a "substance has been substituted wholly or in part for the article."

The packing of shellfish with ice in contact may lead to the absorption by the oyster of a portion of the water formed by the melting ice, thus leading to the adulteration of the oysters with water.

Only unpolluted cold or iced water should be employed in washing shucked shellfish, and the washing, including chilling, should not continue longer than the minimum time necessary for cleaning and chilling.

In view of the fact that the shipping season has begun and shippers will require several months to provide themselves with suitable containers for the shipment of shellfish out of contact with ice, no prosecutions will be recommended prior to May 1, 1910, for the shipment or sale in interstate commerce of oysters or other shellfish because of the addition of water caused solely by shipment in contact with ice.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

W. M. Hays,
Acting Secretary of Agriculture.

WASHINGTON, D. C., October 14, 1909.

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OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 111.

THE LABELING OF YEAST.

On August 3, 1909, a hearing was held before the Board of Food and Drug Inspection on the application of the Food and Drugs Act of June 30, 1906, to the sale in interstate commerce of compressed yeast. Other investigations along the same line have been made by the Department, and as a result of the hearing and of these investigations the position of the Department is:

- 1. That the term "compressed yeast," without qualification, means distillers' yeast without admixture of starch.
- 2. That if starch and distillers' yeast be mixed and compressed such product is misbranded if labeled or sold simply under the name "compressed yeast." Such a mixture or compound should be labeled "compressed yeast and starch."
 - 3. That it is unlawful to sell decomposed yeast under any label.

H. W. WILEY, F. L. DUNLAP,

GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., January 7, 1910.



OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 112.

AMENDMENT TO REGULATION 28 (LABELING OF DERIVATIVES).

Section 8 of the Food and Drugs Act of June 30, 1906, paragraph "Second," under "Drugs," provides that a drug shall be deemed to be misbranded "if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein."

In an opinion rendered January 15, 1909, the Attorney-General held that a derivative within the meaning of this section of the act is a substance which is so related to one of the specified substances "that it would be rightly regarded by recognized authorities in chemistry as obtained from the latter 'by actual or theoretical substitution,' and it is not indispensable that it should be actually produced therefrom as a matter of fact;" and, further, that the labeling of derivatives, as prescribed by this section, is a proper subject conferred upon them by section 3, and that a rule or regulation requiring the name of the specified substance to follow that of the derivative would be in harmony with the general purpose of the act, and an appropriate method by which to give effect to its provisions.

In conformity with this opinion, the Board of Food and Drug Inspection recommends that Regulation 28 of the Rules and Regulations for the enforcement of the Food and Drugs Act, published in Circular 21 of the Office of the Secretary, be amended by the addition, to follow paragraph (f), of a new paragraph to be designated as paragraph (g), reading as follows:

(g) In declaring the quantity or proportion of any of the specified substances the names by which they are designated in the act shall be used, and in declaring the quantity or proportion of derivatives of any of the specified substances, in addition to the trade name of the derivative, the name of the specified substance shall also be stated, so as to indicate clearly that the product is a derivative of the particular specified substance.

This paragraph (g) prescribes, in effect, that in labeling derivatives the name of the specified substance must be stated, so as to clearly indicate that the product is a derivative of the particular substance named in the act.

Regulation 28 as amended shall be effective on and after April 1, 1910, and the regulation in full shall read as follows:

REGULATION 28.—SUBSTANCES NAMED IN DRUGS OR FOODS.

(Section 8, second under "Drugs;" second under "Foods.")

- (a) The term "alcohol" is defined to mean common or ethyl alcohol. No other kind of alcohol is permissible in the manufacture of drugs except as specified in the United States Pharmacopæia or National Formulary.
- (b) The words alcohol, morphine, opium, etc., and the quantities and proportions thereof, shall be printed in letters corresponding in size with those prescribed in Regulation 17, paragraph (c).
- (c) A drug, or food product, except in respect of alcohol, is misbranded in case it fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, heroin, cocaine, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.
- (d) A statement of the maximum quantity or proportion of any such substances present will meet the requirements, provided the maximum stated does not vary materially from the average quantity or proportion.
- (e) In case the actual quantity or proportion is stated it shall be the average quantity or proportion with the variations noted in Regulation 29.
- (f) The following are the principal derivatives and preparations made from the articles which are required to be named upon the label:

Alcohol, Ethyl: (Cologne spirits, grain alcohol, rectified spirits, spirits, and spirits of wine).

Derivatives-

Aldehyde, ether, ethyl acetate, ethyl nitrite, and paraldehyde.

Preparations containing alcohol—

Bitters, brandies, cordials, elixirs, essences, fluid extracts, spirits, sirups, tinctures, tonics, whiskies, and wines.

MORPHINE, ALKALOID:

Derivatives-

Apomorphine, dionine, peronine, morphine, acetate, hydrochloride, sulphate, and other salts of morphine.

Preparations containing morphine or derivatives of morphine—

Bougies, catarrh snuff, chlorodyne, compound powder of morphine, crayons, elixirs, granules, pills, solutions, sirups, suppositories, tablets, triturates, and troches.

OPIUM GUM:

Preparations of opium—

Extracts, denarcotized opium, granulated opium, and powdered opium, bougies, brown mixture, carminative mixtures, crayons, dover's powder, elixirs, liniments, ointments, paregoric, pills, plasters, sirups, suppositories, tablets, tinctures, troches, vinegars, and wines.

Derivatives—

Codeine, alkaloid, hydrochloride, phosphate, sulphate, and other salts of codeine.

Preparations containing codeine or its salts—

Elixirs, pills, sirups, and tablets.

COCAINE, ALKALOID:

Derivatives-

Cocaine hydrochloride, oleate, and other salts.

Preparations containing cocaine or salts of cocaine—

Coca leaves, catarrh powders, elixirs, extracts, infusion of coca, ointments, paste, pencils, pills, solutions, sirups, tablets, tinctures, troches, and wines.

HEROIN:

Preparations containing heroin—

Sirups, elixirs, pills, and tablets.

Alpha and Beta Eucaine:

Preparations—

Mixtures, ointments, powders, and solutions.

CHLOROFORM:

Preparations containing chloroform—

Chloranodyne, elixirs, emulsions, liniments, mixtures, spirits, and sirups.

CANNABIS INDICA:

Preparations of cannabis indica—

Corn remedies, extracts, mixtures, pills, powders, tablets, and tinctures. Chloral Hydrate (Chloral, U. S. Pharmacopæia, 1890):

Derivatives—

Chloral acetophenonoxim, chloral alcoholate, chloralamide, chloralimide, chloral orthoform, chloralose, dormiol, hypnal, and uraline.

Preparations containing chloral hydrate or its derivatives—

Chloral camphorate, elixirs, liniments, mixtures, ointments, suppositories, sirups, and tablets.

ACETANILIDE (Antifebrine, phenylacetamide):

Derivatives—

Acetphenetidine, citrophen, diacetanilide, lactophenin, methoxy-acetanilide, methylacetanilide, para-iodoacetanilide, and phenacetine.

Preparations containing acetanilide or derivatives—

Analgesics, antineuralgics, antirheumatics, cachets, capsules, cold remedies, elixirs, granular effervescing salts, headache powders, mixtures, pain remedies, pills, and tablets.

(g) In declaring the quantity or proportion of any of the specified substances the names by which they are designated in the act shall be used, and in declaring the quantity or proportion of derivatives of any of the specified substances, in addition to the trade name of the derivative, the name of the specified substance shall also be stated, so as to indicate clearly that the product is a derivative of the particular specified substance.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

FRANKLIN MACVEAGH,

Secretary of the Treasury.

JAMES WILSON,

Secretary of Agriculture.

CHARLES NAGEL,

Secretary of Commerce and Labor.

Washington, D. C., January 6, 1910.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 113.

THE LABELING OF WHISKY, MIXTURES, AND IMITATIONS THEREOF, UNDER THE FOOD AND DRUGS ACT OF JUNE 30, 1906.

Under the Food and Drugs Act of June 30, 1906, all unmixed distilled spirits from grain, colored and flavored with harmless color and flavor, in the customary ways, either by the charred barrel process, or by the addition of caramel and harmless flavor, if of potable strength and not less than 80° proof, are entitled to the name whisky without qualification. If the proof be less than 80°, i. e., if more water be added, the actual proof must be stated upon the label and this requirement applies as well to blends and compounds of whisky.

Whiskies of the same or different kinds, i. e., straight whisky, rectified whisky, redistilled whisky and neutral spirits whisky are like substances and mixtures of such whiskies, with or without harmless color or flavor used for purposes of coloring and flavoring only, are blends under the law and must be so labeled. In labeling blends the Act requires two things to be stated upon the label to bring the blended product within the exception provided by the statute: First, the blend must be labeled, branded or tagged so as to plainly indicate that it is a blend, in other words that it is composed of two or more like substances, which in the case of whisky must each be of itself a whisky, and Second, the word "blend" must be plainly stated upon the package in which the mixture is offered for sale. A mixture of whiskies therefore, with or without harmless coloring or flavoring, used for coloring and flavoring only, is correctly labeled "Kerwan Whisky. A Blend of Whiskies."

Since the term whisky is restricted to distillates from grain, and distillates from other sources are unlike substances to distillates from grain, such distillates from other sources without admixture with grain distillates are misbranded if labeled whisky without qualification, or as a blend of whiskies. However, mixtures of whisky, with a potable alcoholic distillate from sources other than grain, such as cane, fruit or vegetables, are not misbranded if labeled compound whisky, provided the following requirements of the law are complied with: First, that the product shall be labeled, branded or tagged so as to plainly indicate that it is a compound, i. e., not a mixture of like substances, in this case whiskies; and, Second, that the word "Compound" is

plainly stated upon the package in which the mixture is offered for sale. For example, a mixture of whisky, in quantity sufficient to dominate the character of the mixture, with a potable alcoholic distillate from sources other than grain and including harmless color and flavor is correctly labeled "Kerwan Whisky. A compound of whisky and cane distillate." Unmixed potable alcoholic distillates from sources other than grain, with or without harmless color or flavor, are not misbranded if labeled "Imitation Whisky."

When an essence or oil is added to a distillate of grain, which without such addition is entitled to the name whisky, and the effect of such addition is to produce a product which simulates a whisky of another kind different from the kind of whisky to which the essence is added, the mixture is an imitation of the particular kind of whisky which is simulated, e. g., if rye essence be added to a highly rectified distillate of corn, the mixture is misbranded if labeled rye whisky. Such a mixture is not misbranded if labeled "Whisky—Imitation Rye."

Nothing in the Food and Drugs Act inhibits any truthful statement upon the label of any product subject to its terms, such as the particular kind or kinds of whisky, vended as whisky or as blends or compounds thereof, but when descriptive matter, qualifying the name whisky, is placed upon the label, it must be strictly true, and not misleading in any particular. The law makes no allowance for seller's praise upon the label, if false or misleading, and the product is misbranded if a false or misleading statement be made upon one part of the label and the truth about the product be stated upon another part. Similarly a product is misbranded if the label is false or misleading through the use of a trade-marked statement, design or device. fact that a phrase, design or device is registered in the U.S. Patent Office gives no license for its deceptive use. All descriptive matter qualifying or particularizing the kind of whisky, whether volunteered or required by the law to be stated, as in the case of blends and compounds, must be given due prominence as compared with the size of type and the background in which the name whisky appears, so that the label as a whole shall not be misleading in any particular.

Food Inspection Decisions 45, 65, 95 and 98, and all rulings in conflict herewith, are hereby revoked.

Franklin MacVeagh,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Charles Nagel,

Secretary of Commerce & Labor.

WASHINGTON, D. C., February 16, 1910.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION No. 114.

THE LABELING OF "CARACAS COCOA."

The Board of Food and Drug Inspection has had under consideration for some time the question of the propriety of the use of the term "Caracas" as applied to cocoa coming from South America. Valuable information has been obtained through the Department of State in the form of a dispatch from the American consul at La Guaira, Venezuela, under date of September 30, 1909. In reply to a request from the Secretary of State for a report on the cocoa of Venezuela and its proper designation, the American consul states as follows:

In reply thereto I am informed that the term "Caracas cocoa" or "Caracas cacao" should properly, according to its original usage, be applied only to cacaos exported through the port of La Guaira, but through the extension of the industry and similarity of product it has become corrupted so as to cover all "current" or "ordinary" cacaos of Venezuela, including those coming from Rio Chico, Rio Caribe, Guiria, Carupano, and Higuerote. This has come about because of the parallel quality of these cacaos with those of the so-called "Caracas" district.

There are three Venezuelan districts usually found in current quotations of cacaos: Angostura, being the cacaos coming out of the lower Orinoco basin through Ciudad Bolivar; Caracas, those mentioned above; Maracaibo, those cacaos being exported through Maracaibo. Exports from La Guaira and Puerto Cabello, with the exception of perhaps 10,000 bags (mentioned below) cover only such cacaos as are generally known as "current," and therefore classified by importers in the United States as "Caracas."

There are some small districts lying between La Guaira and Puerto Cabello, known as Choroni, Ocumare, Cepe, and Chuao, turning out about 10,000 bags annually of a very high grade of cocoa, but this virtually all goes to Europe, principally to Paris, and is therefore not quoted in the ordinary "brokers" cocoa reports.

* * * * * * * *

The cacaos from Carupano, Rio Caribe, and Higuerote are said to be of the same grade as these two latter. The Angosturas may be more or less a cent better in grade than the samples of "Caracas" sent herewith.

* * * * * * *

From what I can learn of the cacao situation I think the name "Caracas" has gotten to be more of a designation of the current class of Venezuelan cacao than to indicate the district of its production, and under the circumstances it seems the

term has taken on the broader meaning suggested in the letter of the Secretary of Agriculture of August 30, 1909. To further indicate that this is true I beg to inclose a "Broker's cocoa report," from a New York commission house, wherein no other Venezuelan districts are named than Angostura, Caracas, and Maracaibo.

In House Documents, volume 65, serial 4844, Fifty-eighth Congress, page 155, is the following:

The cacao of Venezuela also finds a ready sale in the United States, in the markets of which it is known, like coffee, by the name of "Caracas" and "Maracaibo," the former embracing the cacao coming from Rio Caribe, Guiria, Carupano, Rio Chico, Higuerote, and other places on the eastern coast; the other grade comes from the States of Zulia, Merida, Trujillo, and Tachira.

This corresponds entirely with the views expressed by our consulat La Guaira.

After a consideration of this question, the Board is of the opinion that the term "Caracas" is properly applied to the area mentioned in the above quotation from House Documents, volume 65.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., February 16, 1910.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION No. 115.

ON THE USE OF GEOGRAPHICAL NAMES.

Regulation 19 of Circular 21, under captions (b) and (c) contains the following:

- (b) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place, when such name indicates that the article was manufactured or produced in that place.
- (c) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

There are many cases which have been considered by the Board of Food and Drug Inspection in which it has been necessary to decide whether or not, in its opinion, certain geographical names have been sufficiently generic to indicate a style, type, or brand, and in consequence might be used without offending any of the provisions of the food and drugs act. Among the geographical names which have been under consideration are "Rocky Ford" as applied to cantaloupes, and "Indian River" as applied to oranges.

The Rocky Ford melon is not a new variety of melon, but is one of the older varieties of melons which in the environment of Rocky Ford, Colo., has attained particular excellence.

The same remark applies to the Indian River oranges of Florida. They are not a new variety, but various varieties which in the environment of the Indian River have attained unusual excellence.

The board holds that the terms "Rocky Ford" and "Indian River" have not become sufficiently generic to indicate styles, types, or brands of melons and oranges, respectively, but that these geographical names are only properly applied to the product of the restricted area for the melons which are grown in or near Rocky Ford, and for the

product grown in or near the Indian River. Inasmuch as the term "Rocky Ford" has thus become associated with a melon of peculiar excellence of a certain geographical locality, the board holds that it is unlawful to sell in interstate commerce melons not grown in the Rocky Ford district as "Rocky Ford Seed" melons. The terms are nearly alike, the intent is to deceive, and the law provides that a label should not be false or deceptive in any particular.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., *February 23*, 1910.

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OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 116.

AMENDMENT TO FOOD INSPECTION DECISION 74.

In Food Inspection Decision 74, it is provided that—

Stearin, for mixture with domestic oils, not animal, may be admitted without certificate if the importer executes a penal bond conditioned upon the subsequent export of all stearin thus imported.

This provision is revoked, and hereafter stearin will not be admitted into the United States unless accompanied by a certificate, in the form prescribed in Food Inspection Decision 74, showing its freedom from disease, as in the case of meats and other meat food products of cattle, sheep, swine, and goats.

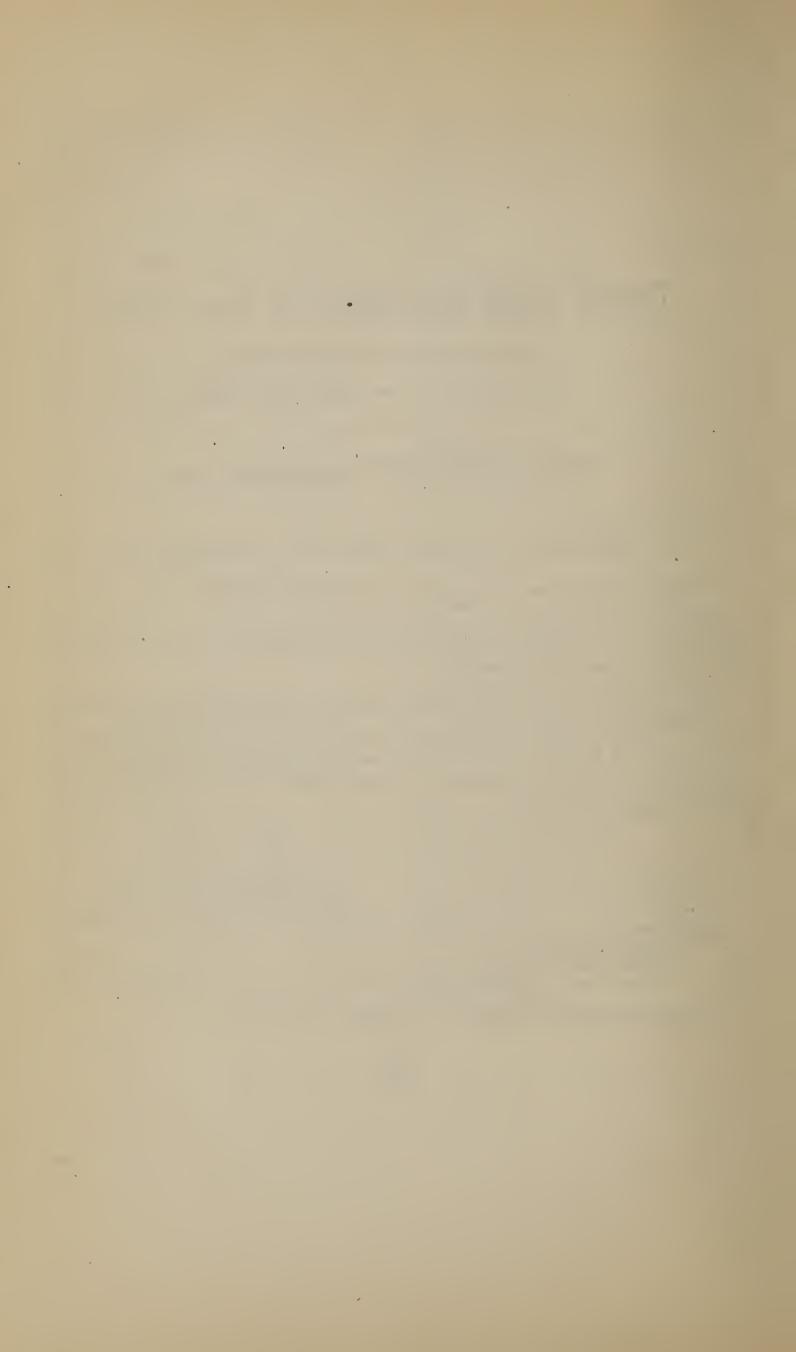
H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., April 12, 1910.



OFFICE OF THE SECRETARY,

Board of Food and Drug Inspection.

FOOD INSPECTION DECISION NO. 117.

THE USE OF CERTIFIED COLORS.

Food Inspection Decision No. 76, published July 13, 1907, gives a list of seven coal-tar dyes, which may, without objection from the Department of Agriculture, be used in foods until further notice. Food Inspection Decision No. 77, published September 25, 1907, provides for the certification of dyes. Food Inspection Decision No. 77 was amended March 25, 1909, by Food Inspection Decision No. 106. Some manufacturers have succeeded in producing the seven colors, under the conditions outlined in Food Inspection Decision No. 77. Certified dyes are now on the market. Certified dyes may be used in foods without objection by the Department of Agriculture, provided the use of the dye in food does not conceal damage or inferiority. If damage or inferiority be concealed by the use of the dye, the food is adulterated.

Uncertified coal-tar dyes are likely to contain arsenic and other poisonous material, which, when used in food, may render such food injurious to health and, therefore, adulterated under the law.

In all cases where foods subject to the provisions of the Food and Drugs Act of June 30, 1906, are found colored with dyes which contain either arsenic or other poisonous or deleterious ingredient which may render such foods injurious to health, the cases will be reported to the Department of Justice and prosecutions had.

The Department is in possession of facts which show that there are so-called vegetable colors on the market which contain excessive quantities of arsenic, heavy metals and contaminations due to imperfect or incomplete manufacture. While the Department has raised no objection to the use of vegetable colors, per se, yet the use of colors even of vegetable origin, open to the objection of excessive arsenic, etc., should not be used for coloring food products.

F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., April 7, 1910.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 118.

LABELING OF WHISKEY COMPOUNDS UNDER F. I. D. 113.

At the instance of certain parties in interest we have considered the suggestion for a modification of the rules embodied in Food Inspection Decision No. 113. The suggestion was that mixtures of whiskey with a potable alcohol distillate from sources other than grain, such as cane, fruit, or vegetables, are not misbranded if labeled "a blend of whiskey and neutral spirit." After exhaustive consideration we have concluded that such a change would be in conflict with the controlling reason of the rule itself.

It has also been suggested that the term "blend" might be employed under the circumstances given if the neutral spirit disclosed its origin by the designation "neutral molasses spirit," or other like terms. While a modification in that form might protect the public against deception or misunderstanding, we are nevertheless of the opinion that such a modification would still be in conflict with the fundamental principle adopted in the President's opinion and in Food Inspection Decision No. 113. In our opinion such a combination, if it is to be designated according to the terms of the law, would be a compound, and not a blend, and if either term is to be employed the former is the only one that is permissible.

Our conclusion accordingly is that we must decline to modify the decision heretofore adopted in any respect.

Franklin MacVeagh,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Charles Nagel,

Secretary of Commerce and Labor.

Washington, D. C., April 18, 1910.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 119.

USE OF SHELLAC AND OTHER GUMS FOR COATING CHOCOLATES AND OTHER CONFECTIONS.

The Board of Food and Drug Inspection has carefully considered the evidence which has been presented at various times respecting the practice of coating chocolates and other confections with shellac and other gums.

The Board is of the opinion that it is not a proper proceeding under the provisions of the Food and Drugs Act. It is evident that such coating will not only conceal inferiority, but it appears further that as a rule the gums are dissolved in alcohol. One man in giving evidence before the Board stated that in his opinion there was no objection to wood alcohol as a solvent. In dipping confections into an alcoholic solution of a gum a certain quantity of the alcohol must necessarily permeate the product. Evidence is adduced showing that the product is not submitted to any subsequent process of heating whereby the traces of alcohol could be removed. Although. only mere traces of alcohol may remain, the addition of these subtances, and especially of wood alcohol, to a confection is specifically prohibited by the act. Evidence is also in the possession of the Board to show that a large number of the manufacturers either never have employed this method or have discontinued it, and that goods can be, and are, made and sold in all quantities with no difficulty without the use of shellac or other gums. Evidence further shows that one of the reasons for adding the coating is that the goods may be held for a longer time. The exposure of confections for a long while before use is not advisable nor desirable.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

W. M. Hays,

Acting Secretary.

Washington, D. C., May 6, 1910.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 120.

LABELING OF OHIO AND MISSOURI WINES.

The question has arisen whether fermented beverages made in the States of Ohio and Missouri by the addition of a solution of sugar and water to the natural juice of grapes before fermentation may be labeled, under the Food and Drugs Act, as "Ohio Wine," or "Missouri Wine," respectively, without further qualification. In Food Inspection Decision 109 it was announced that the term "wine" without qualification is properly applied only to the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes without addition or abstraction, except such as may occur in the usual cellar treatment for clarifying and aging.

It has been decided after a careful review that the previous announcement is correct and that the term "wine" without further characterization must be restricted to products made from untreated must without other addition or abstraction than that which may occur in the usual cellar treatment for clarifying and aging. However, it has been found that it is impracticable, on account of natural conditions of soil and climate, to produce a merchantable wine in the States of Ohio and Missouri without the addition of a sugar solution to the grape must before fermentation. This condition has recognition in the laws of the State of Ohio, by which wine is defined to mean the fermented juice of undried grapes, and it is provided that the addition, within certain limits, of pure white or crystallized sugar to perfect the wine or the use of the necessary things to clarify and refine the wine, which are not injurious to health, shall not be construed as adulterations and that the resultant product may be sold under the name "wine." Furthermore, it is permitted in some of the leading wine-producing countries of Europe to add sugar to the grape juice and wine, under restrictions, to remedy the natural deficiency in sugar or alcohol, or an excess of acidity, to such an extent as to make the quality correspond to that of wine produced,

without any admixture, from grapes of the same kind and vintage in good years. It is conceived that there is no difference in principle in the adding of sugar to must in poor years to improve the quality of the wine than in the adding of sugar to the must every year for the same purpose in localities where the grapes are always deficient.

In view of this practice, and having regard to the fact that fermented beverages have been produced in the States of Ohio and Missouri by the addition of a sugar solution to grape must before fermentation and sold and labeled as "Ohio Wine" and "Missouri Wine," respectively, for a period of over sixty years, it is held a compliance with the terms of Food Inspection Decision 109 if the product made from Ohio and Missouri grapes by complete fermentation of the must under proper cellar treatment, and corrected by the addition of a sugar solution to the must before fermentation so that the resultant product does not contain less than five parts per thousand acid and not more than 13 per cent of alcohol after complete fermentation, are labeled as "Ohio Wine" or "Missouri Wine" as the case may be, qualified by the name of the particular kind or type to which it belongs.

An Ohio or Missouri dry still wine made as above stated and sweetened with a sugar solution which does not increase the volume of the wine more than 10 per cent, and fortified with tax-paid spirits, may be labeled as "Ohio Sweet Wine" or "Missouri Sweet Wine" as the case may be, qualified by the name of the particular kind or type to which it belongs.

The product made in Ohio and Missouri by the addition of water and sugar to the pomace of grapes from which the juice has been partially expressed, and by fermenting the mixture until a fermented beverage is produced, may be labeled as "Ohio Pomace Wine" or "Missouri Pomace Wine" as the case may be. If a sugar solution be added to such products for the purpose of sweetening after fermentation they should be characterized as "Sweet Pomace Wines." The addition to such products of any artificial coloring matter or sweetening or preservative other than sugar must be declared plainly on the label to render such products free from exception under the Food and Drugs Act.

Franklin MacVeagh,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Charles Nagel,

Secretary of Commerce and Labor.

Washington, D. C., May 13, 1910.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 121.

THE FLOATING OF SHELLFISH.

(AMENDMENT TO F. I. D. 110.)

Considerable evidence has been submitted to the Department since the issuance of Food Inspection Decision 110 on the practice of floating or drinking oysters in water of less saline content than that in which they were grown to maturity.

Full consideration has been given to all the hearings and to the briefs and other information submitted subsequent to the hearings and the Board is of the opinion that it is not improper to drink oysters in water of a saline content equal to that in which oysters will grow to maturity. If, however, oysters are floated in water of a less saline content than that in which oysters will properly mature, the packages containing such oysters must be very clearly and legibly labeled "Floated Oysters," otherwise they will be considered adulterated under section 7 of the law.

Particular attention should be paid by the growers and handlers of oysters to the character of the water in which the oysters are brought to maturity or floated. Where such waters are polluted it will invariably follow that the oysters will also partake of this pollution and subsequent washing of the oysters, or even floating in water which is not polluted is likely not to cleanse them of this pollution.

Oysters found in interstate commerce in a polluted condition because of the character of the water in which they are grown or floated are adulterated under the Food and Drugs Act.

F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:
James Wilson,
Secretary of Agriculture,
Washington, D. C., May 14, 1910.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 122.

THE LABELING OF PORT AND SHERRY WINES PRODUCED IN THE UNITED STATES.

A hearing was held on March 21, 1910, before the Secretary of Agriculture and the Board of Food and Drug Inspection on the labeling of wines produced in California, which for many years have been known as "California Port" and "California Sherry," respectively.

It is the view of the Department that the terms "Port" and "Sherry" without qualification are properly applied only to the products from Portugal and Spain, respectively, but it is held that domestic ports and sherries are not misbranded if the terms "Port" or "Sherry," as the case may be, are qualified by the name of the State where the wine is produced.

F. L. Dunlap,
Geo. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., May 31, 1910.

46674—No. 122—10



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 123.

LABELING OF RICES.

Inquiries have been received as to what is the proper branding under the food and drugs act of certain varieties of rice which have come to be known under geographic names. It is well known among the trade that there are current in commerce in the United States varieties of rice grown in Japan and varieties of rice grown within the United States from seed originating in Japan, which are marked and sold as "Japan Rice" irrespective of origin, and that a variety of rice grown in Mexico is imported as "Honduras Rice." The names "Japan Rice" and "Honduras Rice," used without qualification, in the opinion of the Board, clearly convey the impression to consumers that the rices are grown in Japan and Honduras, respectively, and if applied to rices not there grown, constitute misbranding within the meaning of section 8 of the food and drugs act, which provides—

That the term "misbranded" as used herein shall apply * * * to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

The labeling of rices which have come to be known under geographical names, and which are not grown in the State or country which the names indicate, is covered by Regulation 19, paragraph (c), reading as follows:

The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

To meet the requirements of this regulation rices grown within the United States, labeled "Japan Rice," should have also plainly stated on the label "Grown in the United States;" rices grown in Mexico or Louisiana, for example, labeled "Honduras Rice," should have also stated plainly on the label "Grown in Mexico," or "Grown in Louisiana," as the case may be.

There are also on the market varieties of rice labeled "Carolina White" and "Carolina Gold," which are grown in North and South

Carolina, and also in any other States from Carolina seed. The Board is of the opinion that the names "Carolina White" and "Carolina Gold" by long usage have come to mean particular varieties of rice rather than rice grown in North or South Carolina, and such rices will not be held to be misbranded if plainly labeled "Carolina White" or "Carolina Gold," as the case may be, whether qualified or not, as growers or packers may see fit, by a statement of the name of the locality where the rice is actually grown. On the other hand, if it is desired to designate rices grown from Carolina seed in States other than North and South Carolina as "Carolina Rice," there should also be plainly stated on the label the name of the locality where the rice is actually grown, as, for example, "Carolina Rice, Grown in Arkansas."

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson,

Secretary of Agriculture.

Washington, D. C., June 16, 1910.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 124.

LABELING OF STOCK FEED.

It has been brought to the attention of the Board of Food and Drug Inspection that considerable uncertainty exists in the minds of manufacturers of stock feed as to what ingredients are included within the terms "nitrogen-free extract," "carbohydrates," and "sugar and starch." Confusion in this particular results in part from the varied interpretation given to the feeding stuff laws of different States. Each of the terms has a definite significance. The term "nitrogen-free extract" includes starch, sucrose, reducing sugars, pentosans, organic acids, coloring matter, and certain other ingredients in small quantities, and the amount of nitrogen-free extract present in a stock feed is determined by subtracting the sum of the moisture, crude fiber, protein, fat, and ash content from 100 per cent. Stock feed will not be held to be misbranded on account of statements on labels of the "nitrogen-free extract" content if analysis shows that the amount obtained by this method is correctly declared.

The term "carbohydrates" includes most of the specified ingredients which make up the nitrogen-free extract, plus crude fiber, but does not include organic acids and coloring matter. The amount of ingredients included in nitrogen-free extract which are not carbohydrates is so small in stock feeds that they may be disregarded in stating the amount of carbohydrates, and stock feeds will not be held to be misbranded on account of statements on labels of the proportion of carbohydrates if analysis shows that the percentage of carbohydrates declared equals the percentage of nitrogen-free extract obtained as indicated, plus the percentage of crude fiber.

Sugar and starch are carbohydrates and are included in determining the amount of carbohydrates present in stock feed. The term "starch and sugar," however, is properly applied only to the actual starch, sucrose, and reducing sugars contained therein, and stock feed will not be held to be misbranded on account of statements on labels of the

percentage of starch and sugar, as such, if the percentage stated is the correct percentage of the amount of the starch, sucrose, and reducing sugars actually present.

This decision will go into effect January 1, 1911.

H. W. WILEY, GEO. P. McCabe, F. L. DUNLAP,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., June 28, 1910.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 125.

THE LABELING OF CORDIALS.

The term "cordial" is usually applied to a product, the alcohol content of which is some type of a distilled spirit, commonly neutral spirits or brandy. To this is added sugar and some type of flavor. The flavor is sometimes derived directly by the addition of essential oils, again by use of synthetic flavors, and also by the treatment of some vegetable product with the alcoholic spirit to extract the flavoring ingredients. It is likewise the general custom to color cordials. When a cordial is colored in such a way as to simulate the color of the fruit, flavor, plant, etc., the name of which it bears, the legend "Artificially Colored" in appropriate size type shall appear immediately beneath the name of the cordial, as is required by Regulation Where the color used is not one which simulates the color of a natural product, the name of which is borne by the liqueur, then the legend as to the presence of artificial color need not be used. For example, crème de menthe which is artificially colored green should be labeled "Artificially Colored." On the contrary, chartreuse, either green or yellow, need bear no such legend for color.

When the flavoring material is not derived in whole directly from a flower, fruit, plant, etc., the name of any such flower, fruit, plant, etc., should not be given to any cordial or liqueur unless the name is preceded by the word "Imitation."

The term cordial carries with it the significance of sugar (sucrose) as the sweetening agent. When anhydrous sugar (dextrose) is used, the label should bear a statement substantially as follows: "Prepared with anhydrous sugar," which statement should be made in a distinct fashion on the main label.

F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

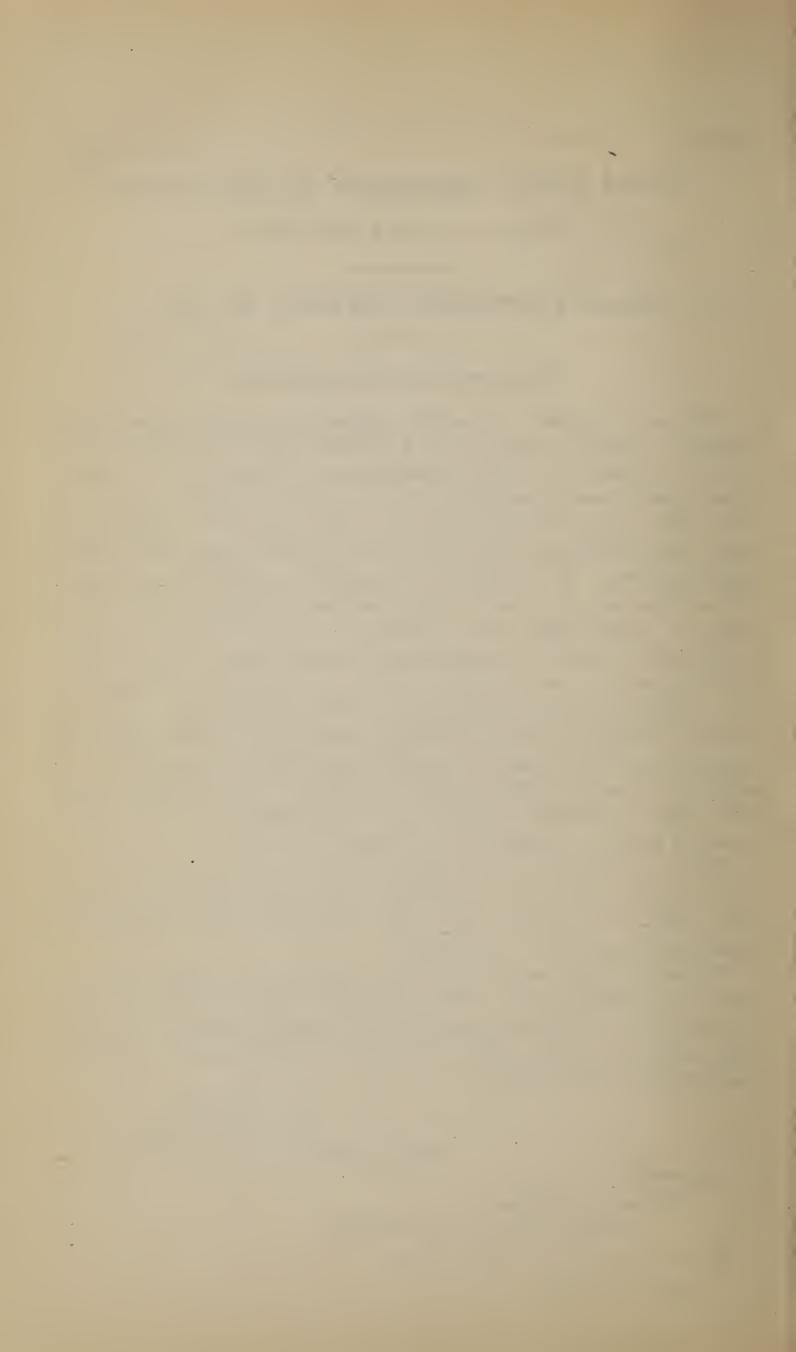
Approved:

WILLIS L. MOORE,

Acting Secretary of Agriculture.

Washington, D. C., July 7, 1910.

52872—No. 125—10



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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 126.

SALTS OF TIN IN FOOD.

The attention of the board has been directed to canned goods which contain salts of tin derived from the solvent action of the contents of the package upon the tin coating. Pending further investigations on this question all canned goods which are prepared prior to January 1, 1911, will be permitted to enter and pass into interstate commerce without detention or restriction in so far as their content of tin salts is concerned. All foods which are canned subsequently to January 1, 1911, will be permitted importation and interstate commerce if they do not contain more than 300 milligrams of tin per kilogram, or salts of tin equivalent thereto. When the amount of tin, or an equivalent amount of salts of tin, is greater than 300 milligrams per kilogram, entry of such canned goods packed subsequently to January 1, 1911, will be refused, and if found in interstate commerce proper action will be taken.

It is the opinion of the board that the trade will experience little hardship in adjusting itself to this condition, as the results of examinations made by the Bureau of Chemistry of various types of canned goods indicate that in a very large majority of cases inconsiderable quantities of tin are found, well within the limit herein set.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

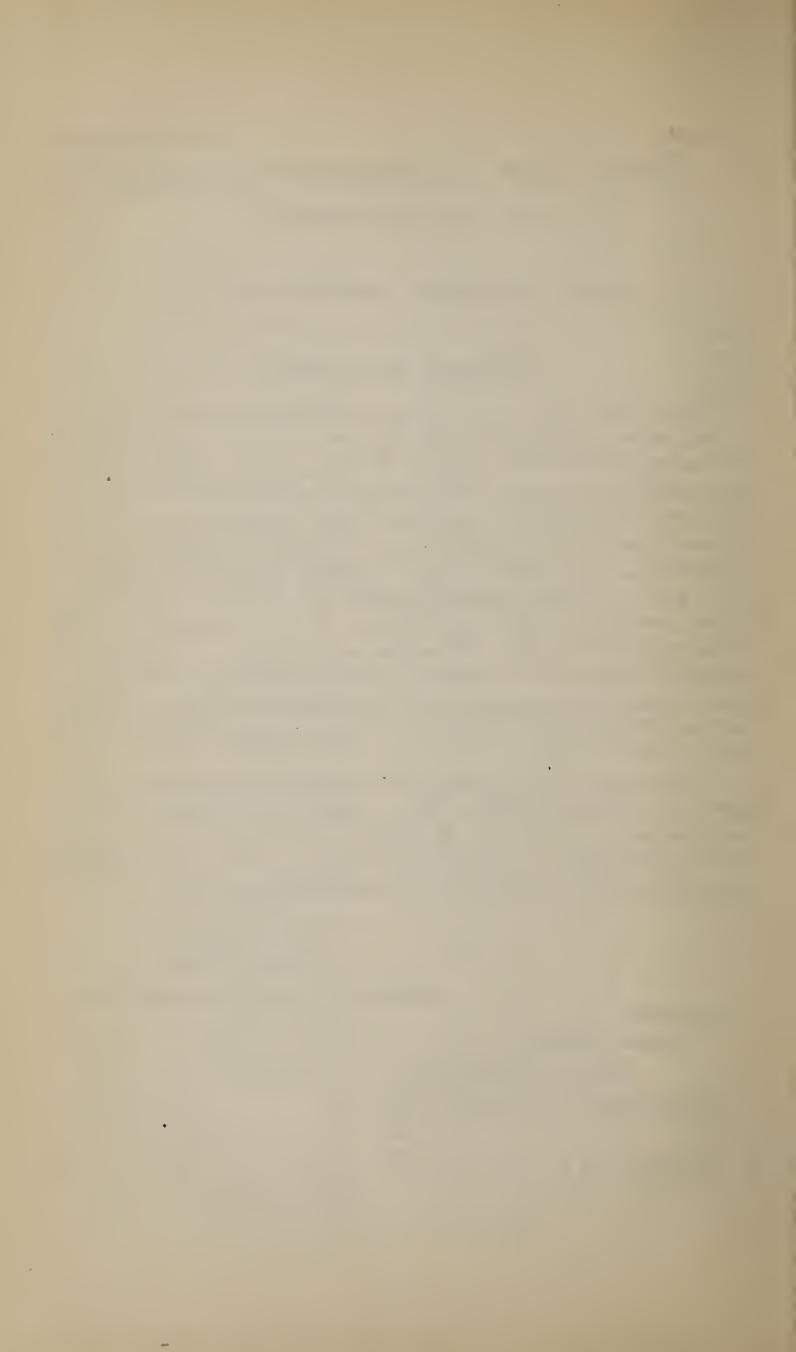
Board of Food and Drug Inspection.

Approved:

James Wilson,

Secretary of Agriculture,

Washington, D. C., September 22, 1910.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 127.

DECISION OF THE ATTORNEY-GENERAL IN REGARD TO THE LABEL-ING OF WHISKIES SOLD UNDER DISTINCTIVE NAMES.

The following decision of the Attorney-General in regard to the labeling of whisky is hereby promulgated as Food Inspection Decision No. 127.

WILLIS L. MOORE,
Acting Secretary of Agriculture.

Washington, D. C., October 26, 1910.

DEPARTMENT OF JUSTICE,
Washington, October 19, 1910.

The honorable the Secretary of Agriculture.

Sir: I have received your letter of July 28, 1910, in which you submit to me the following question of law for my opinion:

Is "Canadian Club whisky" such a distinctive name, under the provisions of section 8, paragraphs 10 and 11, of the food and drugs act of June 30, 1906 (34 Stat., 768), as to relieve a mixture of two separate and distinct distillates of grain from the requirement of being labeled "A blend of whiskies," under section 8, paragraph 12, of the same act?

Your letter informs me that—

"Canadian Club whisky" is a mixture of grain distillates, duly aged after mixing, without further admixture, and reaches the consumer at 90° proof. It is a particular kind and brand of whiskies made by Hiram Walker & Sons (Limited), at Walkerville, Ontario, and is now and has been for years known and sold under the name "Canadian Club whisky." It is known by that name and no other to the trade and consumers in the United States and other countries,

and no other whisky is known by that name. "The Department of Agriculture," you advise me, "claims that the product is required to be labeled 'a blend of whiskies,' under the law as interpreted in Food Inspection Decision 113. The distillers contend that 'Canadian Club whisky,' under section 8 of the food and drugs act, is such a distinctive name as is there described, and therefore that the product is not required to be labeled as a blend."

By arrangement between your Department and Messrs. Hiram Walker & Sons (Limited) briefs were submitted to me by the Solicitor of your Department and the counsel of Messrs. Hiram Walker & Sons, respectively, in support of their respective contentions; and I have also had the assistance of oral argument by such Solicitor and counsel.

By executive order dated April 8, 1909, the President referred to the Solicitor-General of the United States certain questions, including, among others:

I. What was the article called whisky as known (1) to the manufacturers, (2) to the trade, and (3) to the consumers at and prior to the date of the passage of the pure-food law?

II. What did the term whisky include?

The Solicitor-General took a voluminous amount of testimony and heard the arguments of parties appearing before him, and reported to the President on May 24, 1909, among other things, that—

(1) The article called whisky as known to the manufacturers at and prior to the date of the passage of the pure-food law was—

(a) What is often spoken of as "straight whisky," made from

gràin.

(b) Also what is often spoken of as "rectified whisky," made from grain, when not a mere neutral spirit, as described in section (d)

below, of the answers to this question I.

(c) Also a mixture of straight whiskies, or of rectified whiskies, or of straight whisky and rectified whisky, or of straight whisky and what is often known as neutral spirit (made from grain), or of rectified whisky and such neutral spirit (made from grain), or of straight whisky, rectified whisky, and such neutral spirit (made from grain), if in the particular case the mixture satisfied the description of whisky given below in answer to question II (Proceedings, etc., p. 1245).

The article called whisky as known to the consumers * * *

was---

(a) What is often spoken of as "straight whisky," made from

(b) Also what is often spoken of as "rectified whisky" if conforming to the description of whisky given below in answer to question II

(c) Also a mixture of straight whiskies, or of rectified whiskies, or of straight whisky and rectified whisky, or of straight whisky and what is known as neutral spirit (made from grain), or of rectified whisky and such neutral spirit (made from grain), or of straight whisky, rectified whisky, and such neutral spirit (made from grain), if in the particular case the mixture satisfied the description of whisky given below in answer to Question II.

In answer to the question, "What did the term 'whisky' include?" he reported as follows:

The term "whisky" included, both at and prior to the date of the passage of the pure-food law, and has since included, the spirituous liquor composed of (1) alcohol derived by distillation from grain; (2) a substantial amount of by-products (often spoken of as congeners), likewise derived by distillation from grain, and giving a distinctive flavor and properties; (3) water sufficient without unreasonable dilution to make the article potable; and (4) in some cases—though such addition is not essential—harmless coloring or flavoring matter, or both, in amount not materially affecting other

qualities of whisky than its color or flavor.

A mixture of two or more articles, being each a whisky within the foregoing description, was at and prior to the date of passage of the pure-food law, and has since been, whisky. A mixture of one or more whiskies, being each whisky within the foregoing description, with alcohol or a neutral spirit—being an article different from whisky through lack of a substantial amount of by-products derived by distillation from grain and giving distinctive flavor and properties—is whisky if the alcohol or neutral spirit is derived by distillation from grain and if the mixture still conforms to the above general description of whisky; and so it was at and prior to the date of passage of the pure-food law. (Proceedings, etc., p. 1246.)

Upon exceptions to this report the decision of the Solicitor-General was reviewed by the President, who differed with him only in that he thought the Solicitor-General had fallen into the error of—

making too nice a distinction in reference to the amount of congeneric substances or traces of fusel oil required to constitute whisky for practical purposes, when the flavor and color of all whiskies but straight whiskies have been chiefly that of ethyl alcohol and burnt sugar.

And the President held:

After an examination of all the evidence it seems to me overwhelmingly established that for a hundred years the term "whisky" in the trade and among the customers has included all potable liquor distilled from grain; that the straight whisky is, as compared with the whisky made by rectification or redistillation and flavoring and coloring matter, a subsequent improvement, and that therefore it is a perversion of the pure-food act to attempt now to limit the meaning of the term "whisky" to that which modern manufacture and taste have made the most desirable variety.

It is undoubtedly true that the liquor trade has been disgrace-fully full of frauds upon the public by false labels, but these frauds did not consist in palming off something which was not whisky as whisky, but in palming off one kind of whisky as another and better kind of whisky. Whisky made of rectified or redistilled or neutral spirits and given a color and flavor by burnt sugar, made in a few days, was often branded as Bourbon or rye straight whisky. The way to remedy this evil is not to attempt to change the meaning and scope of the term "whisky," accorded to it for one hundred years,

and narrow it to include only straight whisky; and there is nothing in the pure-food law that warrants the inference of such an intention by Congress.

Following the decision of the President, the Secretaries of the Treasury, Agriculture, and Commerce and Labor prepared and promulgated a regulation under the food and drugs act known as "Food Inspection Decision No. 113," the portions of which material to this opinion are as follows:

Under the food and drugs act of June 30, 1906, all unmixed distilled spirits from grain, colored and flavored with harmless color and flavor, in the customary ways, either by the charred barrel process or by the addition of caramel and harmless flavor, if of potable strength and not less than 80° proof, are entitled to the name whisky without qualification. * * *

name whisky without qualification. * * * * Whiskies of the same or different kinds, i. e., straight whisky, rectified whisky, redistilled whisky, and neutral spirits whisky are like substances; and mixtures of such whiskies, with or without harmless color or flavor used for purposes of coloring and flavoring only, are

blends under the law and must be so labeled.

This ruling would require "Canadian Club whisky" to be sold under a label stating it to be "A Blend of Whiskies," unless, as claimed by the manufacturers, "Canadian Club whisky" is its own distinctive name, within the meaning of section 8 of the pure food law.

That section prohibits the misbranding of all articles of food (which include drink), and specifies that the term "misbranded" shall apply to all articles the package or label of which shall bear any statement, design, or device regarding the article or ingredients contained therein which shall be false or misleading in any particular; that the article shall also be deemed misbranded—

If it be labeled or branded so as to deceive or mislead the purchaser. * * *

If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of or offered for sale

under the distinctive name of another article. * * *

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale * *.

It is conceded that the requirements in paragraphs first and second, above cited, are alternative, and that a mixture or compound which may be sold under its own distinctive name, pursuant to the provisions of the first paragraph, need not be marked as a "compound," "imitation," or "blend" under the provisions of the second paragraph. Canadian Club whisky is, you say, entirely "a mixture of grain distillates, duly aged after mixing, without further admixture * * *." It is, therefore, a mixture of two whiskies, as under the President's decision the term "whisky" in the trade and among customers includes all potable liquor distilled from grain. Being a mixture of whiskies, it is distinguished from all other whiskies by the name "Canadian Club."

Regulation 20 of the "Rules and Regulations for the enforcement of the Food and Drugs Act," promulgated by the three Secretaries under date of October 17, 1906, and published as Circular No. 21 of the office of the Secretary of Agriculture, reads as follows:

(a) A "distinctive name" is a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound.

(b) A distinctive name shall not be one representing any single

constituent of a mixture or compound.

(c) A distinctive name shall not misrepresent any property or

quality of a mixture or compound.

(d) A distinctive name shall give no false indication of origin, character, or place of manufacture, nor lead the purchaser to suppose that it is any other food or drug product.

Applying this definition, it will be seen (1) that "Canadian Club whisky" is a trade or arbitrary name which clearly distinguishes the particular mixture of whiskies so designated from any other whisky or mixture of whiskies.

- (2) This distinctive name "Canadian Club whisky" is not one representing any single constituent of the mixture, because the word whisky applies to both of the component elements of the mixture, and to each of them.
- (3) The name "Canadian Club whisky" does not misrepresent any property or quality of the mixture, because within the President's definition each of the elements of the mixture is whisky, and the resultant mixture is whisky.
- (4) The name "Canadian Club whisky" gives no false indication of the origin, character, or place of manufacture, because the mixture in fact is made in Canada; nor does it lead the purchaser to suppose that it is any other food or drug product, as it clearly asserts that it is whisky—which is the fact—and in your letter it is stated that it is known by that name and no other to the trade and consumers in the United States and other countries, and no other whisky

is known by that name. "Canadian Club whisky" is therefore the distinctive name of a whisky so called; that name distinguishes the product to which it is attached from all other whiskies and clearly identifies it as the particular kind and brand of whiskies made by Hiram Walker & Sons (Limited) at Walkerville, Ontario. The name distinguishes the particular goods in relation to which it is used from other goods of a like character belonging to other people. (Hopkins on Unfair Trade, sec. 2.) It is certainly as distinctive as the designation "S. N. Pike's Magnolia Whiskey," which, in Kidd v. Johnson (100 U.S., p. 617), was held to constitute a trade-mark, because distinguishing the whisky of the manufacture of S. N. Pike & Co., and their successors in Cincinnati, from all other whisky.

The brief of the Solicitor of the Department of Agriculture contends that the distinctive name under which a mixture or compound may be sold must, in its entirety, be purely arbitrary or fanciful, and must not contain the name of the component elements of the compound. A mixture of wheat and barley, he concedes, might be sold as "Force" or "Vita" without stating of what elements it was composed, but a mixture of two kinds of barley could not be sold as "Melrose barley" without stating that it was "a blend of barleys." It seems to me that such a construction of the term "distinctive name" is not only unwarranted, but undesirable. The two main purposes which the pure-food law was designed to accomplish are, first, to prevent the sale of adulterated foods, and, second, to prevent deception being practiced on the public. It would seem to me that the latter purpose is more apt to be secured by permitting the sale of a product under its own name, qualified by some distinguishing characterization, than by requiring it to be masked in an anonymity which would give no clue to any of its component elements.

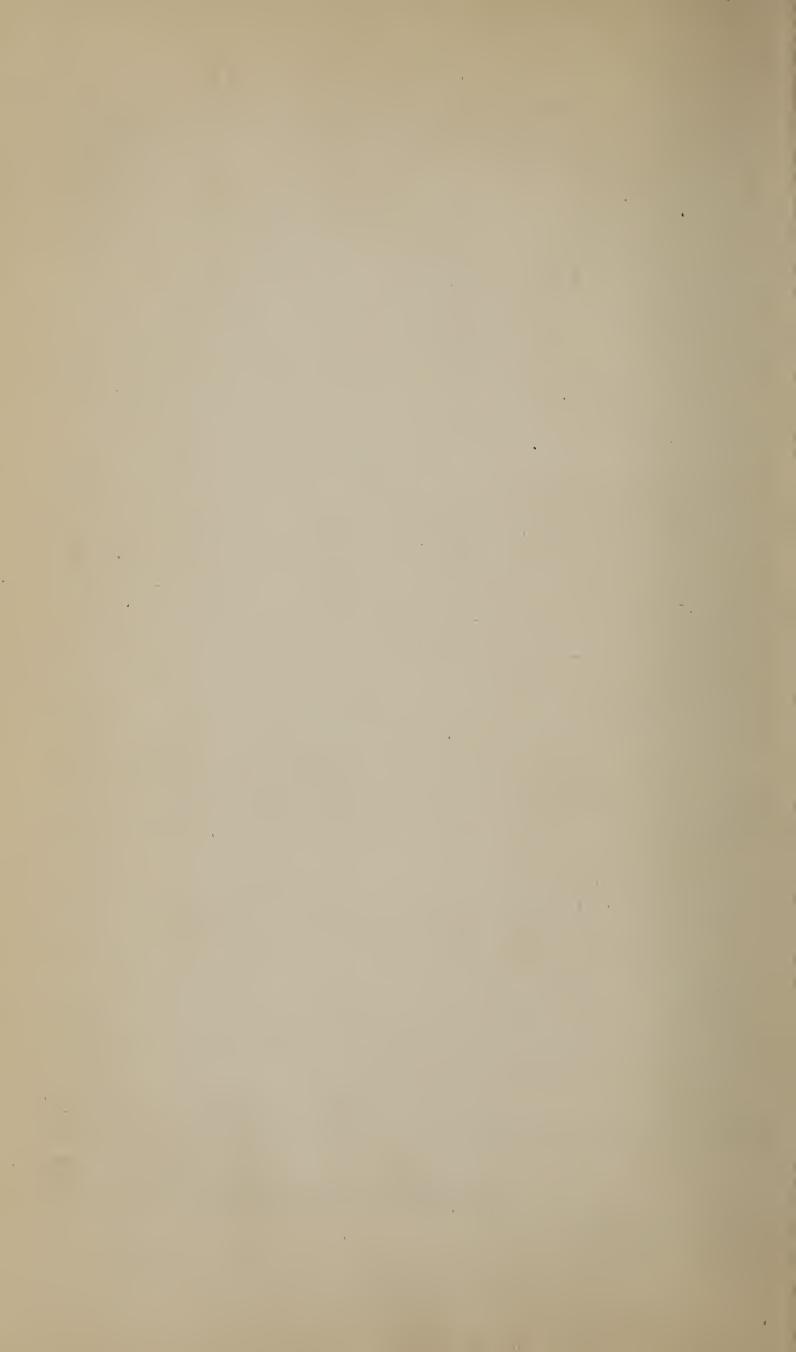
But, without entering into an analysis of the many decisions cited in the briefs of the respective parties, or further pursuing a discussion of the question, it appears to me clear that the name "Canadian Club whisky" is a distinctive name, so arbitrary and so fanciful as to clearly distinguish it from all other kinds of whisky or other things, and a name which, by common use, has come to mean a substance clearly distinguishable by the public from everything else. United States v. 300 Cases of Mapleine, per Sanborn, D. J.; Notice of Judgment 163, Food and Drugs Act, p. 3.)

In my opinion, therefore, it is not necessary that the label under which "Canadian Club whisky" is sold shall state that it is "a blend of whiskies."

I have the honor to be, respectfully,

GEO. W. WICKERSHAM, Attorney-General.





OFFICE OF THE SECRETARY.

FOOD-INSPECTION DECISION NO. 128.

SAGO AND TAPIOCA.

It has come to the attention of the Board of Food and Drug Inspection that there exists among the trade in various parts of the United States a very general misunderstanding with respect to sago and small pearl tapioca. Sago is prepared from the starch obtained from the pith found in the stem of several species of palm trees, natives of the East Indies, and tapioca is prepared by heating in a moist state the starch made from the root of the cassava or tapioca plant, which is indigenous to certain South American countries. Both products ordinarily reach the consumer in granulated form and are designated as "pearl sago" and "pearl tapioca," respectively. While "pearl sago" and "pearl tapioca" are separate and distinct articles of commerce, each resembles the other closely in appearance, and fine pearl tapioca frequently has been labeled and sold as sago.

Under the Food and Drugs Act of June 30, 1906, articles of food are misbranded if the labels or packages contain statements which are false or misleading, or if particular articles are imitations of or offered for sale under the distinctive names of other articles. In the opinion of the Board, the name "sago," or "pearl sago," without qualification, means the product obtained from the pith of East Indian palm trees, and starch products of different origin will be held to be misbranded under the act if labeled or offered for sale as "sago," pearl sago," etc. The prepared starch product derived from the root of the cassava plant is tapioca, and should be sold and labeled as such.

There is also on the market an imitation sago made from potato starch. Imitation food products are misbranded under the act unless they are labeled so as to indicate plainly that they are imitation products and unless the word "imitation" is also plainly stated on the packages in which imitation products are offered for sale. Potato or other starch prepared to resemble pearl sago, therefore, should be labeled, for example, "Imitation sago. Made from potato starch," the words "Imitation" and "Made from potato starch" being declared as plainly and conspicuously as the word "sago." The word "Imitation" must appear on the label, but an equivalent expression may be substituted for "Made from potato starch," which will indicate unmistakably that the product is not made from the pith of East Indian palm trees, but is derived from a different source.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., October 31, 1910.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 129.

THE CERTIFICATION OF STRAIGHT DYES AND MIXTURES UNDER SECONDARY CERTIFICATES. (AMENDMENT TO F. I. D. 77.)

In Food Inspection Decision 77 provision is made for the recertification of straight dyes (i. e., the seven accepted dyes of F. I. D. 76) and mixtures thereof, with or without other harmless ingredients.

Doubt has been expressed as to whether the requirements of F. I. D. 77, with respect to certification, are the same for those who are not manufacturers as they are for manufacturers. This amendment is issued relative to recertification in order to remove uncertainty and to indicate the scope of F. I. D. 77.

All persons, manufacturers or others, requesting certification of mixtures or recertification of straight dyes, or of mixtures or combinations thereof, shall submit the following form of secondary certificate to the Secretary of Agriculture:

SECONDARY CERTIFICATE.

I,, residing at(Full	, do hereby depose and state that I have address.)
repacked lbs. of certified lo	t (or lots) purchased from, of
_	mplished in the following fashion:
(Full description	of what has been done with the lot or lots.)
Certified mixture No. J. D. &	Co, or certified straight dye No. J. D. & Co
Trade name	
	(Name.)
Subscribed and sworn to befor, this day of,	e me, of at
·	(Name of officer authorized to administer oaths.)

When the secondary certificate refers to mixtures, the term "mixture" means—

not only such mixtures as consist wholly of certified coal-tar dyes but also those which contain one or more certified coal-tar dyes (and no other coal-tar dye or dyes) in combination with other components, constituents, or ingredients not coal-tar dyes, which other components, constituents, or ingredients are in and of themselves or in the combination used harmless and not detrimental to health or are not prohibited for use in food products; the exact formula of such mixtures, including all of the components, constituents, or ingredients, or other parts of the mixture, together with a statement

of the total weight of mixtures so made, must be deposited with the Secretary of Agriculture. (F. I. D. 106.)

The term "straight dye," as used herein, refers to the seven dyes specified in F. I. D. 76.

In the case of mixtures one (1) pound samples, and in the case of straight dyes one-half $(\frac{1}{2})$ pound samples must be submitted with the secondary certificate. If larger samples are needed in individual cases the Department will ask for them.

Only those mixtures will be certified which contain no other dyes than coal-tar dyes previously certified. Mixtures containing animal or vegetable dyes are not subject to certification.

The above form for secondary certificates varies but slightly from that given in Food Inspection Decision No. 77. It contains the addition "Certified mixture No. J. D. & Co." and "Certified straight dye No. J. D. & Co. When the manufacturer or other person submits a secondary certificate, whichever legend is appropriate to the certificate is to be used. The initials are to be those of the person or firm filing the certificate; the blank space is to be filled with the number of the secondary certificate filed by that particular person or firm. For example, the firm of J. D. & Co. has already filed fourteen secondary certificates, the new one to be filed under the form given above will then be labeled "Certified mixture No. J. D. & Co. 15," or "Certified straight dye No. J. D. & Co. 15," as the case may be. That is, the recertified straight dyes or certified mixtures are to be given a number in regular order, according to the number of such secondary certificates filed by any person or firm. The completed legend is the one to be used in marketing the products thus submitted under the secondary certificate. Notification will be given of the acceptance or rejection of the certificate when investigation of the product has been completed.

Makers of secondary certificates must submit the trade name of mixtures produced, and no such trade name or keyed modification thereof should be used on any other mixture prepared by the same person or company.

Secondary certificates are to be sent in duplicate to the Department of Agriculture; the duplicate need not, however, be signed or sworn to. The samples should be submitted with the secondary certificates.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., November 8, 1910.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 130.

AMENDMENT TO REGULATION 5.

Regulation 5 of the Rules and Regulations for the Enforcement of the Food and Drugs Act of June 30, 1906, is hereby amended to read as follows:

REGULATION'S. HEARINGS.

(Section 4.)

- (a) When the examination or analysis shows that samples are adulterated or misbranded within the meaning of this act notice of that fact shall be given in every case to the party or parties against whom prosecution lies under this act for the shipment or manufacture or sale of the particular product and such other interested parties as the Secretary of Agriculture may direct, and a date shall be fixed at which such party or parties may be heard before the Secretary of Agriculture or such other person as he may direct. The hearings shall be had at places designated by the Secretary of Agriculture most convenient for all parties concerned. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorney and may submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. Interested parties may present proper interrogatories to analysts, to be submitted to and propounded by the Secretary of Agriculture or the officer conducting the hearing. Such privilege, however, shall not include the right of cross-examination. The Secretary of Agriculture may order a reexamination of the sample or have new samples drawn for further examination.
- (b) If, after hearings held, it appears that a violation of the act has been committed, the Secretary of Agriculture shall give notice to the proper United States attorney.
- (c) Any health, food, or drug officer or agent of any State, Territory, or the District of Columbia who shall obtain satisfactory evidence of any violation of the Food and Drugs Act, June 30, 1906, as provided by section 5 thereof, shall first submit the same to the Secre-

tary of Agriculture in order that he may give notice and fix dates for

hearings to the proper parties.

FRANKLIN MACVEAGH, Secretary of the Treasury. JAMES WILSON, Secretary of Agriculture. CHARLES NAGEL,

Secretary of Commerce and Labor.

Washington, D. C., January 18, 1911.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 131.

THE COMPOSITION OF EVAPORATED MILK.

For a considerable period of time the Dairy Division of the Bureau of Chemistry has been conducting an extended investigation in regard to the manufacture of evaporated milk (i. e., unsweetened condensed milk) and the character of the milk used by the manufacturers. This investigation has been carried on through the various seasons of the year and in various parts of the country, so that knowledge has been obtained of the seasonal variations in milk from herds of different types, and the different manufacturing methods in use, as well as of the character of the finished product from many sources.

The fault of the standards, as approved by the committee on food standards of the Association of Official Agricultural Chemists and the Interstate Food Commission, published as Circular No. 19 of the Office of the Secretary, lies in the low percentage of fat in the total solids, namely, 27.5 per cent. This low figure the board believes has encouraged the use of a partially skimmed milk, which fact is amply borne out by the many analyses made in the department. Again, this standard of 28 per cent total solids in Circular No. 19 is one not easily attained in all localities of the United States, during all seasons, by the usual methods of manufacture under ordinary working conditions, with the production of a satisfactory marketable article.

Considering the natural variations in the richness of milk from different breeds of cows and at different times of the year, as well as the practical conditions of manufacture, the Department has decided upon the following requirements, which it considers reasonable and just, with respect to the manufacture and composition of evaporated milk (i. e., unsweetened condensed milk):

(1) It should be prepared by evaporating the fresh, pure, whole milk of healthy cows, obtained by complete milking and excluding all milkings within 15 days before calving and 7 days after calving, provided at the end of this 7-day period the animals are in a perfectly normal condition.

- (2) It should contain such percentages of total solids and of fat that the sum of the two shall be not less than 34.3 and the percentage of fat shall be not less than 7.8 per cent. This allows a small reduction in total solids with increasing richness of the milk in fat.
- (3) It should contain no added butter or butter oil incorporated either with whole milk or skimmed milk or with the evaporated milk at any stage of manufacture.

In view of the well-known tendency of factory analyses—often of necessity made rapidly and by persons not skilled as analysts—to give results above the truth with respect to fat, and especially with respect to total solids, manufacturers are advised always to allow a safe margin between their factory practice and the above-stated requirements as to percentage composition. This can be done without difficulty in all localities and at all seasons of the year.

F. L. DUNLAP,
GEO. P. McCabe,
Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

Washington, D. C., February 27, 1911.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 132.

THE USE OF HOMOGENIZED BUTTER AND SKIMMED MILK IN THE MANUFACTURE OF ICE CREAM.

Investigations have shown that there has lately come into use in the trade an apparatus known as a "homogenizer," which has the faculty of so disrupting the globules of fat that a whole milk homogenized does not permit the separation of the cream through the ordinary gravity methods. In like manner butter or other fat and skimmed milk passed through the homogenizer form a product from which the butter does not separate on standing and which resembles in its other physical characteristics whole milk.

Investigations have further shown that butter and skimmed milk are passed through the homogenizer to form a so-called "cream," which is used in place of real cream in the manufacture of ice cream.

The Board is of the opinion that skimmed milk and butter fat in appropriate proportions passed through the homogenizer are not entitled to the name of "milk" or the name of "cream," as the case may be, according to the quantity of fat which is present. The Board is further of the opinion that the product made from a homogenized butter or skimmed milk can not be properly called "ice cream."

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

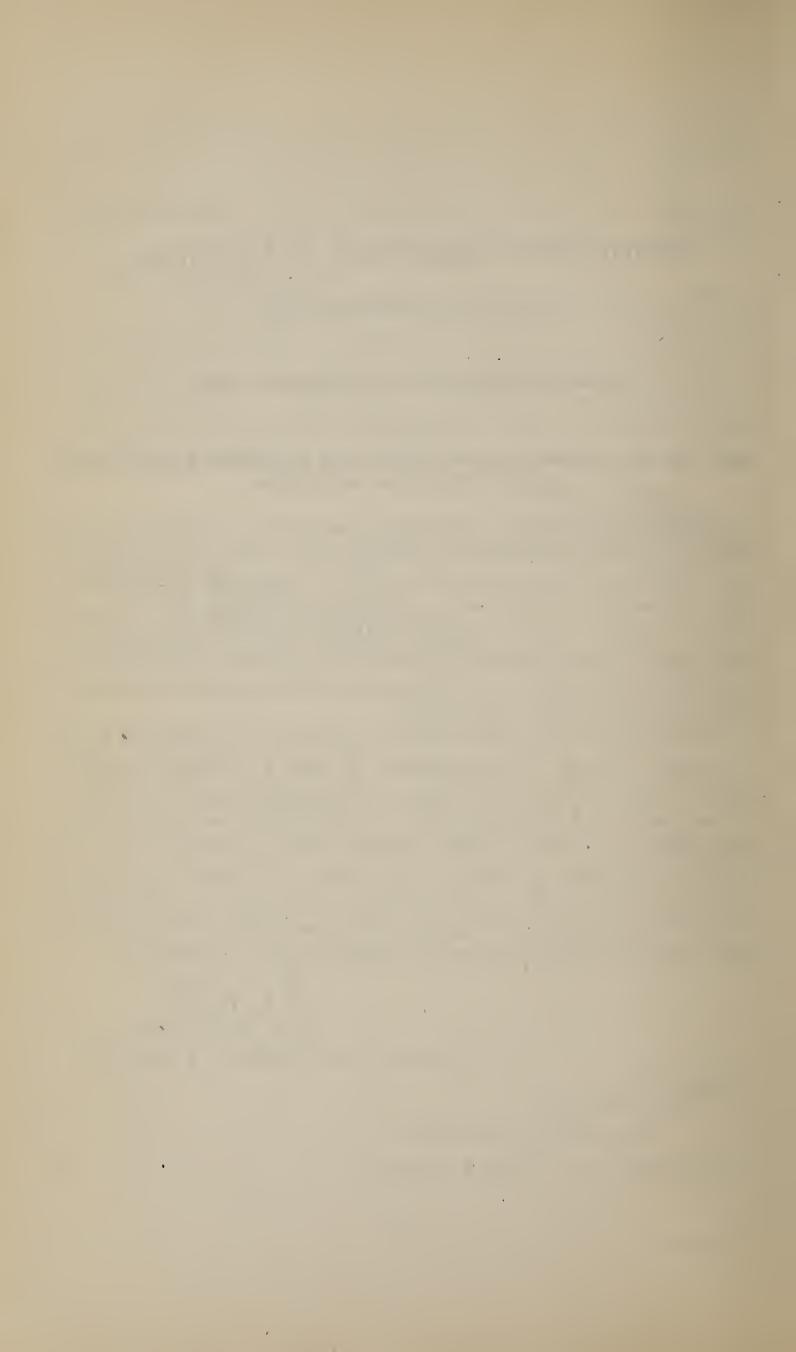
Board of Food and Drug Inspection.

Approved:

James Wilson,

Secretary of Agriculture.

Washington, D. C., March 28, 1911.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 133.

THE COLORING OF GREEN CITRUS FRUITS.

The attention of the Board of Food and Drug Inspection has been directed to the shipment in interstate commerce of green, immature citrus fruits, particularly oranges, which have been artificially colored by holding in a warm, moist atmosphere for a short period of time after removal from the tree. Evidence is adduced showing that such oranges do not change in sugar or acid content after removal from the tree. Evidence further shows that the same oranges remaining on the tree increase markedly in sugar content and decrease in acid content. Further, there is evidence to show that the consumption of such immature oranges, especially by children, is apt to be attended by serious disturbances of the digestive system.

Under the Food and Drugs Act of June 30, 1906, an article of food is adulterated "if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed." It is the opinion of the Board that oranges treated as mentioned above are colored in a manner whereby inferiority is concealed and are, therefore, adulterated.

The Board recognizes the fact that certain varieties of oranges attain maturity as to size, sweetness, and acidity before the color changes from green to yellow, and this decision is not intended to interfere with the marketing of such oranges.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., March 28, 1911.



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 134.

THE LABELING OF NEW ORLEANS MOLASSES.

It appears from an investigation conducted by the Board of Food and Drug Inspection that there is a wide variety of opinions with respect to the meaning of the term "New Orleans molasses." The evidence at hand shows that "New Orleans" molasses is generally understood to be a product of Louisiana. It is apparent that the original significance of the term "New Orleans" molasses as applied to open-kettle drippings or "bleedings" has disappeared.

The Food and Drugs Act requires a label to be free from any statement which is false or misleading in any particular. In view of the general understanding of the term "New Orleans" molasses the board is of the opinion that the term "New Orleans" should be restricted to molasses produced in Louisiana. In addition, all molasses so labeled may bear the further statement of its quality or grade, namely, "open kettle," "first centrifugal," "second centrifugal," "black strap," etc.

F. L. DUNLAP, GEO. P. MCCABE,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., April 12, 1911.



United States Department of Agriculture, office of the secretary.

FOOD INSPECTION DECISION 135.

SACCHARIN IN FOOD.

At the request of the Secretary of Agriculture, the Referee Board of Consulting Scientific Experts has conducted an investigation as to the effect on health of the use of saccharin. The investigation has been concluded, and the Referee Board reports that the continued use of saccharin for a long time in quantities over three-tenths of a gram per day is liable to impair digestion; and that the addition of saccharin as a substitute for cane sugar or other forms of sugar reduces the food value of the sweetened product and hence lowers its quality.

Saccharin has been used as a substitute for sugar in over thirty classes of foods in which sugar is commonly recognized as a normal and valuable ingredient. If the use of saccharin be continued it is evident that amounts of saccharin may readily be consumed which will, through continual use, produce digestive disturbances. In every food in which saccharin is used, some other sweetening agent known to be harmless to health can be substituted, and there is not even a pretense that saccharin is a necessity in the manufacture of food products. Under the food and drugs act articles of food are adulterated if they contain added poisonous or other added deleterious ingredients which may render them injurious to health. Articles of food are also adulterated within the meaning of the act, if substances have been mixed and packed with the foods so as to reduce or lower or injuriously affect their quality or strength. The findings of the Referee Board show that saccharin in food is such an added poisonous or other added deleterious ingredient as is contemplated by the act, and also that the substitution of saccharin for sugar in foods reduces and lowers their quality.

The Secretary of Agriculture, therefore, will regard as adulterated under the food and drugs act foods containing saccharin which, on and after July 1, 1911, are manufactured or offered for sale in the District of Columbia or the Territories, or shipped in interstate or foreign commerce, or offered for importation into the United States.

Franklin MacVeagh,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

CHARLES NAGEL,

Secretary of Commerce and Labor.

WASHINGTON, D. C., April 26, 1911.



F. I. D. 136.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 136.

LABELING OF CHOCOLATE AND COCOA.

After consideration of the evidence submitted in regard to the meaning of the terms "chocolate" and "cocoa," the Board of Food and Drug Inspection has reached the conclusion that the definitions laid down in the "Standards of Purity for Food Products," adopted by the Committee on Food Standards, Association of Official Agricultural Chemists, and printed in Circular No. 19, Office of the Secretary of Agriculture, are substantially correct. By these definitions the names "chocolate," "plain chocolate," "bitter chocolate," "chocolate liquor," and "bitter chocolate coatings," are applied to the solid or plastic mass obtained by grinding cocoa nibs without the removal of fat or other constituents except the germ, containing not more than three (3) per cent of ash insoluble in water, three and fifty hundredths (3.50) per cent of crude fiber, and nine (9) per cent of starch, and not less than forty-five (45) per cent of cocoa fat.

"Sweet chocolate" and "sweet chocolate coatings" are terms applied to chocolate mixed with sugar (sucrose), with or without the addition of cocoa butter, spices, or other flavoring materials, and contain in the sugar and fat-free residue no higher percentage of either ash, fiber, or starch than is found in the sugar and fat-free residue of chocolate.

Cocoa, and powdered cocoa, are terms applied to cocoa nibs, with or without the germ, deprived of a portion of its fat and finely pulverized, and contain percentages of ash, crude fiber, and starch corresponding to those in chocolate after correction for fat removed.

Sweet cocoa, and sweetened cocoa, are terms applied to cocoa mixed with sugar (sucrose), and contain not more than sixty (60) per cent of sugar (sucrose), and in the sugar and fat-free residue no higher percentage of either ash, crude fiber, or starch than is found in the sugar and fat-free residue of chocolate.

Cocoa nibs, and cracked cocoa, are the roasted broken seeds of the cacao tree freed from shell or husk.

Milk chocolate and milk cocoa, in the opinion of the Board, should contain not less than 12 per cent of milk solids, and the so-called nut chocolates should contain substantial quantities of nuts. If sugar is added, for example, to milk chocolate, it should be labeled "sweet milk chocolate," "sweet nut chocolate," etc.

When cocoa is treated with an alkali or an alkaline salt, as in the so-called Dutch process, and the finished cocoa contains increased mineral matter as the result of this treatment, but no alkali as such is present, the label should bear a statement to the effect that the cocoa contains added mineral ingredients, stating the amount. Cocoas and chocolates containing an appreciable amount of free alkali are adulterated. In the opinion of the Board, cocoa not treated with alkali is not soluble in the ordinary acceptance of the term. Cocoa before and after treatment with alkali shows essentially the same lack of solubility. To designate the alkali-treated cocoa as "soluble" cocoa is misleading and deceptive.

H. W. WILEY, F. L. DUNLAP, GEO. P. McCabe,

Board of Food and Drug Inspection.

Approved:

James Wilson,

Secretary of Agriculture.

Washington, D. C., May 20, 1911.

136

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 137.

THE USE OF CHARLOCK AS A SUBSTITUTE FOR MUSTARD.

It has come to the attention of the Board of Food and Drug Inspection that the seed of charlock (*Brassica arvensis* L.) is being substituted by some manufacturers, in whole or in part, for that of the true mustards, viz, yellow or white mustard (*Sinapis alba* L., synonym *Brassica alba* [L.] Boiss.), brown mustard (*B. juncea* L.), and black mustard (*B. nigra* L.).

It is the opinion of the board that when charlock is substituted in part for mustard the label should clearly indicate this fact. A condiment prepared from mustard or mustard flour and charlock with salt, spices, and vinegar is not "Prepared Mustard," but, provided a greater quantity of mustard than of charlock is used, it should be called "Prepared Mustard and Charlock."

H. W. WILEY, F. L. DUNLAP, GEO. P. McCABE,

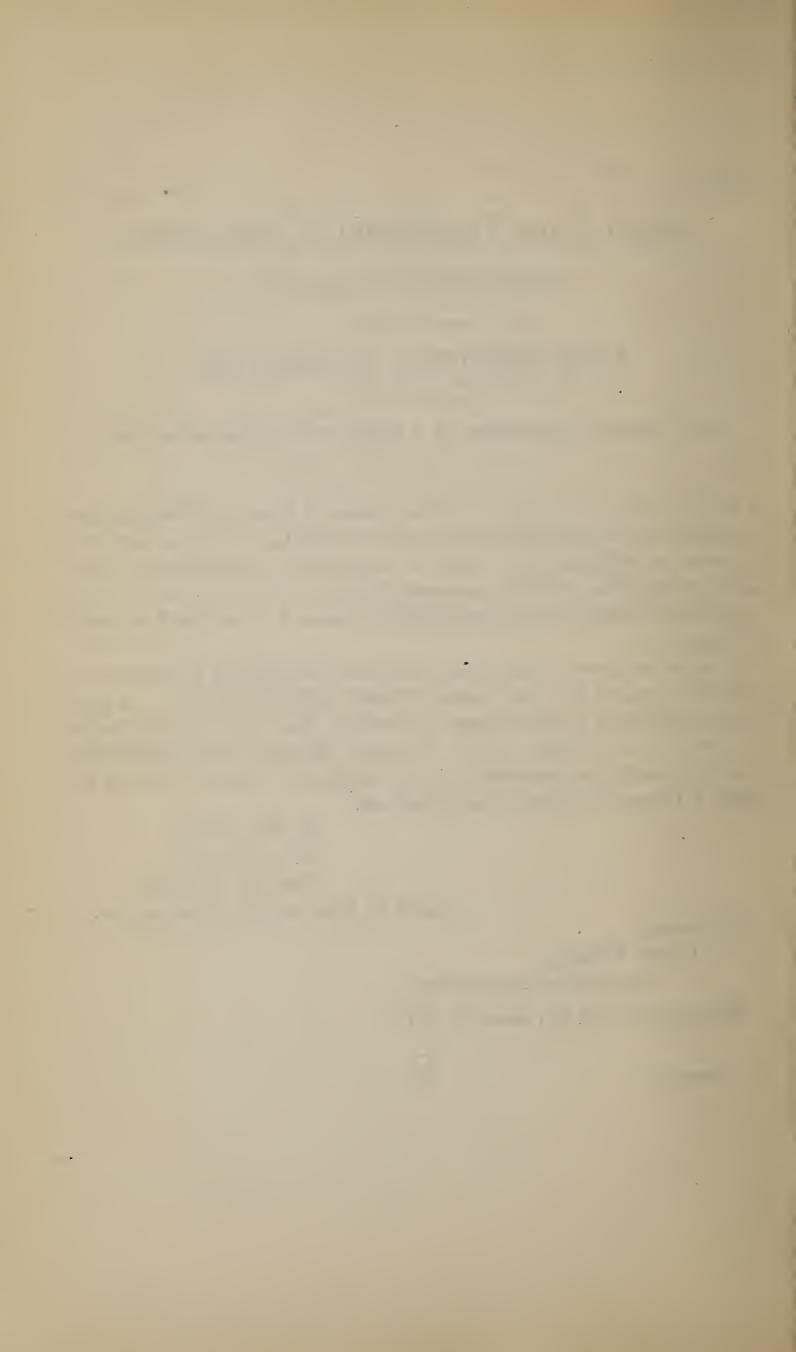
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

WASHINGTON, D. C., June 16, 1911.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 138.

SACCHARIN IN FOOD.

Paragraph 3 of Food Inspection Decision No. 135 is hereby modified to read as follows:

The Secretary of Agriculture, therefore, will regard as adulterated under the food and drugs act foods containing saccharin which, on and after January 1, 1912, are manufactured or offered for sale in the District of Columbia or the Territories, or shipped in interstate or foreign commerce, or offered for importation into the United States.

Franklin MacVeagh,

Secretary of the Treasury.

James Wilson,

Secretary of Agriculture.

Charles Nagel,

Secretary of Commerce and Labor.

WASHINGTON, D. C., June 20, 1911.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 139.

USE OF THE TERM "SWEET OIL."

From time to time this department has received inquiries asking whether or not it is permissible, under the Food and Drugs Act, to label cottonseed oil as "sweet oil." Investigations have shown that some samples marked "sweet oil" consist of cottonseed oil or a mixture of olive oil and cottonseed oil. A careful consideration of the subject leads to the conclusion that the only oil to which the term "sweet oil" may be correctly applied is olive oil.

It is held, therefore, that any oil other than olive oil is misbranded when sold under the name "sweet oil." It is not correct, for example, to label cottonseed oil as "sweet oil" and then elsewhere on the label to describe correctly the true character of the oil.

H. W. WILEY, R. E. DOOLITTLE, F. L. DUNLAP,

Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

Washington, D. C., February 10, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 140.

LABELING OF VINEGARS.

The Board of Food and Drug Inspection has given this question much consideration. A public hearing was given, a series of questions submitted to the various State food commissioners, interested manufacturers, wholesalers, retailers, and consumers, and a study of the various State laws and regulations was made, believing that these represent the general understanding of the terms by the people of those States. From the information thus obtained the board has reached the conclusion that the definitions given in Circular No. 19, Office of the Secretary, are in accordance with the facts. These are as follows:

1. Vinegar, cider vinegar, apple vinegar, is the product made from the alcoholic and subsequent acetous fermentations of the expressed juice of apples.

2. Wine vinegar, grape vinegar, is the product made by the alcoholic

and subsequent acetous fermentations of the juice of grapes.

3. Malt vinegar is the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt.

4. Sugar vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, sirup, molasses, or

refiner's sirup.

5. Glucose vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of starch sugar or glucose.

6. Spirit vinegar, distilled vinegar, grain vinegar, is the product made by the acetous fermentation of dilute distilled alcohol.

Several questions regarding these definitions have been raised and after investigation the board has reached the following conclusions:

Meaning of the term "vinegar."—While the term "vinegar" in its etymological significance suggests only sour wine, it has come to have a broader significance in English-speaking countries. In the United States it has lost entirely its original meaning and when used without a qualifying word designates only the product secured by the alcoholic and subsequent acetous fermentation of apple juice.

"Second pressings."—It is held that the number of pressings used in preparing the juice is immaterial so long as the pomace is fresh and not decomposed. The practice of allowing the pomace from the presses to stand in piles or in vats for a number of days, during which time it becomes heated and decomposed, and then pressing, securing what is ordinarily called "second pressing," in the opinion of the board produces a product which consists in whole or in part of a filthy and decomposed material and is therefore adulterated.

Vinegar from dried-apple products.—The product made from dried-apple skins, cores, and chops, by the process of soaking, with subsequent alcoholic and acetous fermentations of the solution thus obtained, is not entitled to be called vinegar without further designation, but must be plainly marked to show the material from which it is produced. The dried stock from which this product is prepared must be clean and made from sound material.

Addition of water.—When natural vinegars made from cider, wine, or the juice of other fruits are diluted with water, the label must plainly indicate this fact; as, for example, "diluted to —— per cent acid strength." When water is added to pomace in the process of manufacture, the fact that the product is diluted must be plainly shown on the label in a similar manner. Dilution of vinegar naturally reduces, not only the acid strength, but the amount of other ingredients in proportion to the dilution, so that reduced vinegars will not comply with the analytical constants for undiluted products; but the relations existing between these various ingredients will remain the same. Diluted vinegars must have an acid strength of at least 4 grams acetic acid per 100 cubic centimeters.

Mixtures of vinegars.—As different kinds of vinegar differ in source, flavor, and chemical composition, mixtures thereof are compounds within the meaning of the Food and Drugs Act, and if they contain no added poisonous or other added deleterious ingredients, will not be held to be misbranded if plainly labeled with the word "compound," together with the names and proportions of the various ingredients.

Addition of boiled cider and coloring matter.—The Food and Drugs act provides that a product shall be deemed to be adulterated if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed; and, in the opinion of the board, the addition of coloring matters, boiled cider, etc., to vinegar, wine vinegar, and the other types of vinegar, or mixtures thereof, is for the purpose of concealing damage or inferiority or producing an imitation product. In the first instance, the use of such products is an adulteration and therefore prohibited. Products artificially colored or flavored with harmless ingredients in imitation of some

particular kind of vinegar will not be held to be misbranded if plainly labeled "Imitation vinegar" in accordance with the provisions of the law.

Mixture of distilled and sugar vinegars.—The product prepared by submitting to acetous fermentation a mixture of dilute alcohol (obtained, for example, from molasses by alcoholic fermentation and subsequent distillation) and dilute molasses, which has undergone alcoholic fermentation, is not "molasses vinegar" but a compound of distilled vinegar and molasses vinegar; such mixtures, however, must contain a substantial amount of molasses vinegar and not a small amount for the purpose of coloring the distilled vinegar. The molasses used must be fit for food purposes and free from any added deleterious substances.

Acetic acid diluted.—The product made by diluting acetic acid is not vinegar and when intended for food purposes must be free from harmful impurities and sold under its own name.

Product obtained by distilling wood.—The impure product made by the destructive distillation of wood, known as "pyroligneous acid," is not vinegar nor suitable for food purposes.

Acid strength.—All of the products described above should contain not less than four (4) grams of acetic acid per one hundred (100) cubic centimeters.

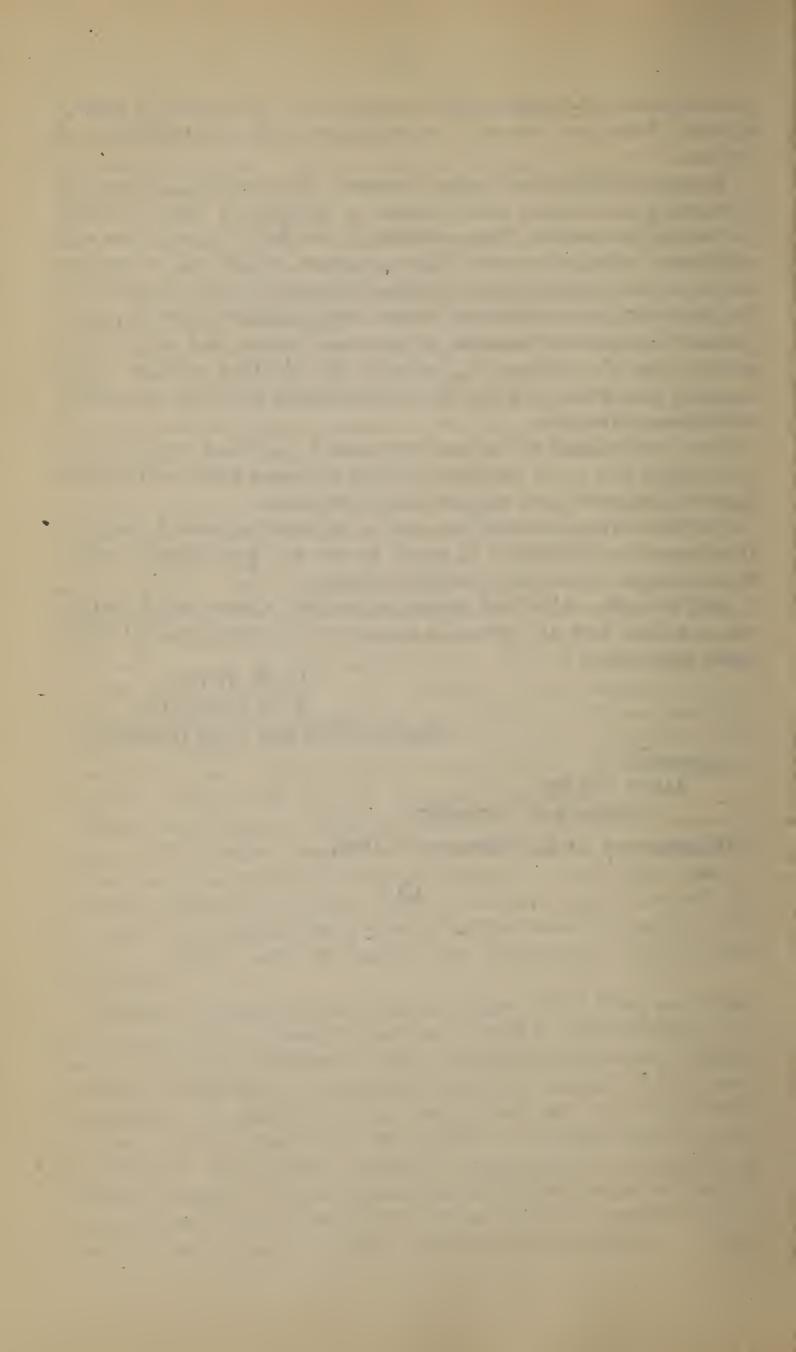
H. W. WILEY,
R. E. DOOLITTLE,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

WASHINGTON, D. C., February 12, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 141.

THE LABELING OF MARASCHINO AND MARASCHINO CHERRIES.

The question of the proper labeling of the products designated as "Maraschino Cherries," "Cherries in Maraschino," "Bigarreau au Marasquin," etc., has been presented to the Board for consideration; and after due investigation and examination of the evidence secured, the Board is of the opinion that the term "Maraschino Cherries" should be applied only to the marasca cherries preserved in maraschino.

Maraschino is a liqueur or cordial prepared by process of fermentation and distillation from the marasca cherry, a small variety of the European wild cherry indigenous to the Dalmatian Mountains. Liqueurs or cordials prepared in imitation of maraschino with artificial flavors or otherwise will not be held to be misbranded if plainly labeled "Imitation" in some manner to show their true character.

In considering the products prepared from the large light-colored cherry of the Napoleon Bigarreau, or Royal Anne type, which are artificially colored and flavored and put up in a sugar sirup, flavored with various materials, the Board has reached the conclusion that this product is not properly entitled to be called "Maraschino Cherries," or "Cherries in Maraschino." If, however, these cherries are packed in a sirup, flavored with maraschino alone, it is the opinion of the Board that they would not be misbranded, if labeled "Cherries, Maraschino Flavor," or "Maraschino Flavored Cherries." If these cherries are packed in maraschino liqueur there would be no objection to the phrase ". Cherries in Maraschino." When these artificially colored cherries are put up in a sirup flavored in imitation of maraschino, even though the flavoring may consist in part of maraschino, it would not be proper to use the word "Maraschino" in connection with the product unless preceded by the word "Imitation." They may, however, be labeled to show that they are a preserved cherry, artificially colored and flavored.

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The presence of artificial coloring or flavoring matter, of any substitute for cane sugar, and the presence and amount of benzoate of soda, when used in these products must be plainly stated upon the label in the manner provided in Food Inspection Decisions Nos. 52 and 104.

The same principle applies to the labeling of cherries put up in sirup flavored with crème de menthe or other flavors.

H. W. WILEY,
R. E. DOOLITTLE,
F. L. DUNLAP,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., February 17, 1912.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 142.

SACCHARIN IN FOOD.

The following decision which relates to the use of saccharin in food will not go into effect until the 1st of April, 1912, the month of March being given to interested parties so as to arrange their business and take such steps as they deem proper.

James Wilson, Secretary of Agriculture.

Washington, D. C., March 1, 1912.

After full consideration of the representations made in behalf of the manufacturers of saccharin at the hearing before us and of the briefs filed by their attorneys, as well as the briefs filed, at our request, by officers of the Department of Agriculture, we conclude that the use of saccharin in normal foods, within the jurisdiction of the Food and Drugs Act, is a violation of law and will be prosecuted.

It is true that the Referee Board did not find that the use in foods of saccharin in small quantities (up to 0.3 gram daily) is injurious to health. However, the Referee Board did find that saccharin used in quantities over 0.3 gram per day for a considerable period is liable to disturb digestion, and the Food and Drugs Act provides that articles of food are adulterated which contain any added poisonous or other added deleterious ingredient which may render them injurious to health.

The Bureau of Chemistry of the Department of Agriculture reports that saccharin has been found in more than fifty kinds of foods in common use. It is argued, therefore, that if the use of saccharin in foods be allowed, the consumer may very easily ingest, day by day, over 0.3 gram, the quantity which, according to the findings of the Referee Board, is liable to produce disturbances of digestion. On

the other hand, it is claimed by the manufacturers that the sweetening power of saccharin is so great that, in a normal dietary, the amount of saccharin ingested daily would not exceed 0.3 gram, the amount found to be harmless by the Referee Board.

However this may be, it is plain, from the finding of the Referee Board, that the substitution of saccharin for sugar lowers the quality of the food. The only use of saccharin in foods is as a sweetener, and when it is so used, it inevitably displaces the sugar of an equivalent sweetening power. Sugar has a food value and saccharin has none. It appears, therefore, that normal foods sweetened with saccharin are adulterated under the law.

In making this decision we are not unmindful of the fact that persons suffering from certain diseases may be directed by their physicians to abstain from the use of sugar. In cases of this kind, saccharin is often prescribed as a substitute sweetening agent. This decision will not in any manner interfere with such a use of saccharin. The Food and Drugs Act provides that any substance which is intended to be used for the prevention, cure, or mitigation of disease is a drug, and a product containing saccharin and plainly labeled to show that the mixture is intended for the use of those persons who, on account of disease, must abstain from the use of sugar, falls within the class of drugs and is not affected by this decision.

The Secretary of the Treasury dissents.

James Wilson,
Secretary of Agriculture.
Charles Nagel,
Secretary of Commerce and Labor.

Washington, D. C., February 29, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 143.

THE LABELING OF CANDIED CITRON.

The Board of Food and Drug Inspection has given consideration to the question of what is the correct use of the term "Candied citron," when applied to the preserved peel of fruits.

The evidence gathered by the board shows distinctly that the term "Candied citron" is generally recognized in the trade, and by the consumer, to be applicable only to the candied peel of fruit of the citron tree, Citrus medica L., variety genuina Engl., a citrus fruit similar to the lemon, but larger and possessing a thick rind of characteristic flavor.

The rind of the citrus melon, Citrullus vulgaris Schrad., is often used in a similar manner to true candied citron. The board is of the opinion that the candied rind of this variety of watermelon, when sold in interstate commerce, must not be designated as "Candied citron." It should be labeled "Candied citron melon," "Candied watermelon," or some similar designation.

It is also considered that such terms as "American citron," "Candied domestic citron," or the like, are not correct designations for the candied citron melon and when used will be deemed misbranding, except when applied to the American product of the citrus fruit "citron," described above.

R. E. DOOLITTLE, F. L. DUNLAP,

A. S. MITCHELL,

Board of Food and Drug Inspection.

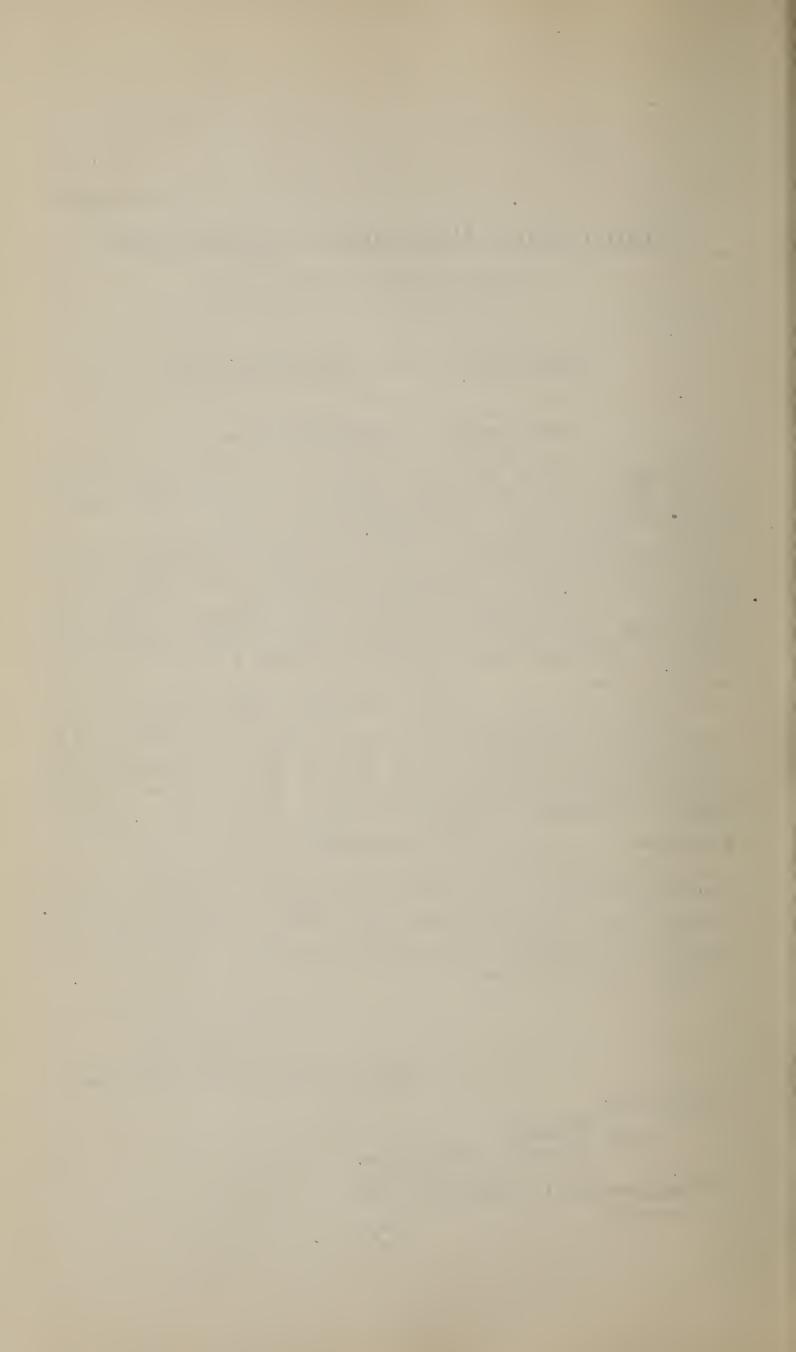
Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., April 15, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 144.

CANNED FOODS: USE OF WATER, BRINE, SIRUP, SAUCE, AND SIMILAR SUBSTANCES IN THE PREPARATION THEREOF.

The can in canned food products serves not only as a container but also as an index of the quantity of food therein. It should be as full of food as is practicable for packing and processing without injuring the quality or appearance of the contents. Some food products may be canned without the addition of any other substances whatsoever—for example, tomatoes. The addition of water in such instances is deemed adulteration. Other foods may require the addition of water, brine, sugar, or sirup, either to combine with the food for its proper preparation or for the purpose of sterilization—for instance, peas. In this case the can should be packed as full as practicable with the peas and should contain only sufficient liquor to fill the interstices and cover the product.

Canned foods, therefore, will be deemed to be adulterated if they are found to contain water, brine, sirup, sauce, or similar substances in excess of the amount necessary for their proper preparation and sterilization.

It has come to the notice of the department that pulp prepared from trimmings, cores, and other waste material is sometimes added to canned tomatoes. It is the opinion of the board that pulp is not a normal ingredient of canned tomatoes, and such addition is therefore adulteration. It is the further opinion of the board that the addition of tomato juice in excess of the amount present in the tomatoes used is adulteration—that is, if in the canning of a lot of tomatoes more juice be added than is present in that lot, the same will be considered an adulteration.

R. E. DOOLITTLE, A. S. MITCHELL,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

Washington, D. C., May 22, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 145.

BLEACHED OATS AND BARLEY.

The Department of Agriculture has received numerous inquiries relative to the application of the Food and Drugs Act to oats, barley, and other grains bleached with the fumes of sulphur. It appears that by this process grains which are damaged or of inferior quality may be made to resemble those of higher grade or quality, and their weight increased by addition of water. Such products, therefore, are adulterated within the meaning of the Food and Drugs Act of June 30, 1906, and can not be either manufactured or sold in the District of Columbia, or in the Territories, or transported or sold in interstate commerce.

It is represented, however, that grains which are weather-stained, or soil-stained, the quality of which is in no wise injured in other respects, are sometimes bleached with sulphur fumes. Pending the report of the Referee Board of Consulting Scientific Experts as to the effect upon health of sulphur dioxid, and the results of experiments being made by this Department as to the effect of sulphur-bleached grains on animals, no objection will be made to traffic in sound and wholesome grains which have been bleached with sulphur dioxid and from which the excess water has been removed, provided that each and every package is plainly labeled to show that the contents have been treated with sulphur dioxid. Bulk shipments should be properly designated on invoices. The terms "purified," "purified with sulphur," "processed," etc., are misleading and not proper designations for these products.

Attention is also called to the fact that grains bleached with sulphur fumes may have their germinating properties very seriously impaired.

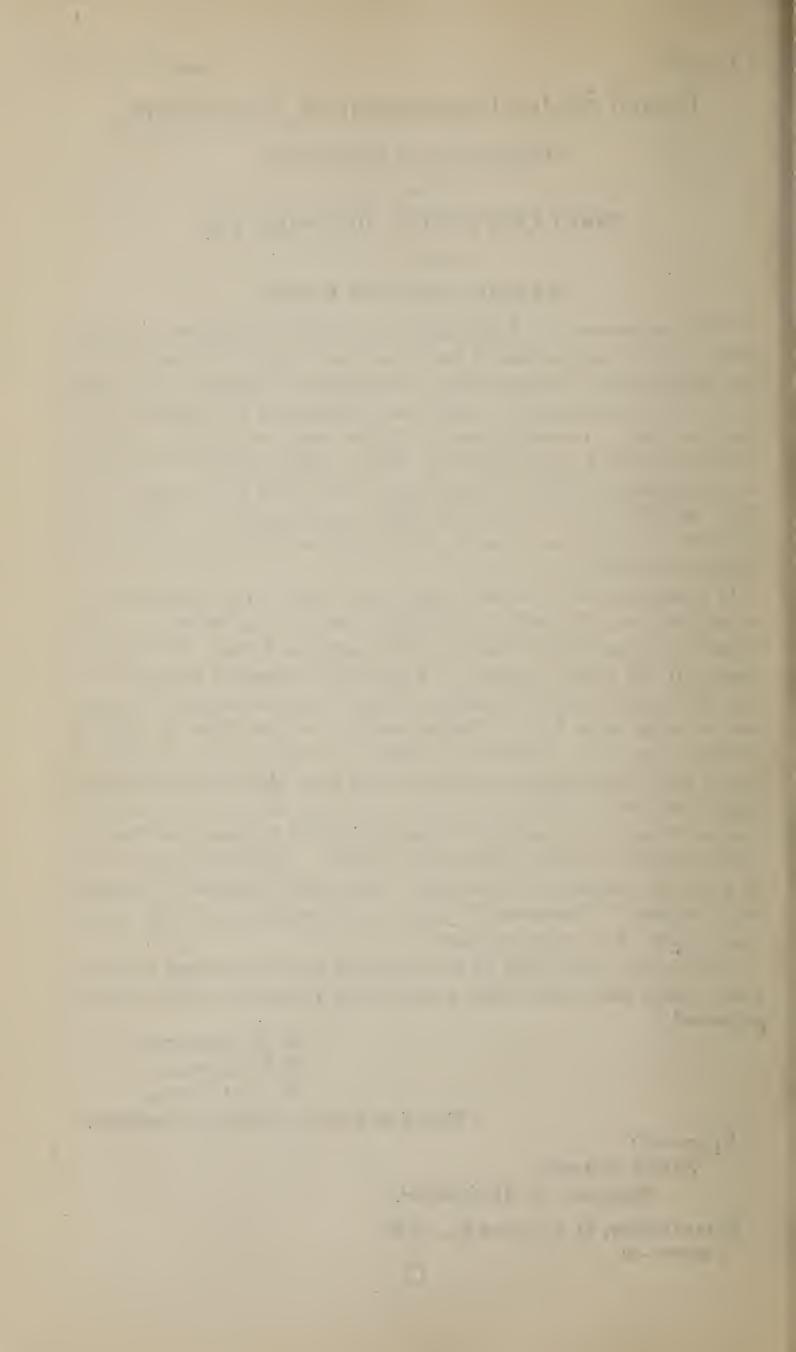
R. E. DOOLITTLE, F. L. DUNLAP, A. S. MITCHELL,

Board of Food and Drug Inspection.

Approved:

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., June 24, 1912. 50838°—12



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 146.

ON THE USE OF SACCHARIN IN FOODS.

There appears to exist a misconception of the position of the Department of Agriculture as to the use of saccharin in foods as announced in Food Inspection Decision No. 142. That decision prohibits the use of saccharin in foods. The law defines the term "drug" and it is considered that saccharin has its proper place in products coming within this definition.

It is recognized that certain specific products generally classified as foods, and sweetened with saccharin, may be required for the mitigation or cure of disease. It is not intended to prohibit the manufacture or sale of such products, provided they are labeled so as to show their true purpose and the presence of saccharin is plainly declared upon the principal label. This must not be interpreted to mean that the use of saccharin in foods prepared for ordinary consumption is permissible even if declared on the label.

R. E. DOOLITTLE, F. L. DUNLAP, A. S. MITCHELL,

Board of Food and Drug Inspection.

Approved:

James Wilson,

Secretary of Agriculture.

Washington, D. C., June 22, 1912.

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OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 147.

ABSINTH.

It is generally recognized in countries which have had experience with the sale and consumption of absinth that this beverage is dangerous to health. Belgium, Switzerland, and Holland have forbidden its manufacture, sale, and importation; absinth is also condemned by the laws of Brazil and its importation forbidden.

The Food and Drugs Act of June 30, 1906, section 11, forbids the importation of any food or drug which is "of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made, or from which it is exported," and also of any food or drug which is "otherwise dangerous to the health of the people of the United States."

Importations of absinth into the United States, therefore, are prohibited, both because they come from countries which forbid or restrict its manufacture and sale, and because these products are injurious to the health of the people of the United States.

Section 7, paragraph 5, in the case of foods, of the Food and Drugs Act, June 30, 1906, provides further that an article shall be deemed to be adulterated within the meaning of the Act "if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health." The beverage commonly known as absinth is a manufactured product containing wormwood, or absinth (Artemisia absinthium), an added deleterious ingredient. The interstate shipment of this product is, therefore, prohibited under this provision of the Food and Drugs Act.

The Secretary of Agriculture, therefore, will regard as adulterated under the Food and Drugs Act absinth which, on and after October 1, 1912, is manufactured or offered for sale in the District of Columbia or the Territories, or shipped in interstate commerce or offered for importation into the United States.

R. E. Doolittle,

F. L. DUNLAP,

A. S. MITCHELL,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

WASHINGTON, D. C., July 12, 1912.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 148.

USE OF COPPER SALTS IN THE GREENING OF FOODS.

The question of the use of copper salts in the greening of foods was referred by the Secretary of Agriculture, on March 11, 1909, to the Referee Board of Consulting Scientific Experts. Exhaustive investigations have been conducted by that board and the Department of Agriculture has received the report of the investigations. The questions which were referred to the Referee Board are as follows:

"Are vegetables greened with copper salts adulterated under the

Food and Drugs Act of June 30, 1906, because,

"(a) a substance has been mixed or pack with them so as to reduce or lower or injuriously affect their quality or strength;

"(b) they have been mixed, colored, powdered, coated, or stained

in a manner whereby damage or inferiority is concealed;

- "(c) they contain any added poisonous or other added deleterious ingredient which may render such articles injurious to health?
 - "(1) in large quantities?

"(2) in small quantities?"

The main general conclusions reached by the Referee Board from a study of their experimental results and other considerations are as follows:

- "(a) Copper salts used in the coloring of vegetables as in commercial practice can not be said to reduce or lower or injuriously affect the quality or strength of such vegetables as far as the food value is concerned;
- "(b) Copper salts used in the greening of vegetables may have the effect of concealing inferiority inasmuch as the bright green color imparted to the vegetables simulates a state of freshness they may not have possessed before treatment;

"(c) In attempting to define a large daily quantity of copper regard must be had to the maximum amount of greened vegetables

which might be consumed daily. A daily dose of 100 grams of coppered peas or beans, which are the most highly colored vegetables in the market, would not ordinarily contain more than 100 to 150 milligrams of copper. Such a bulk of greened vegetables is so large however, that it would hardly be chosen as a part of a diet for many days in succession. Any amount of copper above 150 milligrams daily may, therefore, be considered excessive in practice. A small quantity is that amount which in the ordinary use of vegetables may be consumed over longer periods. From this point of view 10 to 12 milligrams of copper may be regarded as the upper limit of a small quantity.

"It appears from our investigations that, in certain directions, even such small quantities of copper may have a deleterious action and must be considered injurious to health."

The Food and Drugs Act of June 30, 1906, provides that a food is adulterated "if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health." The act also provides that a food is adulterated "if it be * * * colored * * * in a manner whereby damage or inferiority is concealed." It is apparent from the findings of the Referee Board that all foods greened with copper salts are positively adulterated under the first above-quoted provision of the law, and that in certain cases foods may be adulterated under the second above-quoted provision.

The Secretary of Agriculture, therefore, will regard as adulterated under the Food and Drugs Act foods greened with copper salts which, on and after January 1, 1913, are offered for entry into the United States, or are manufactured or offered for sale in the District of Columbia or the Territories, or are shipped in interstate commerce.

All previous food inspection decisions on the subject of greening of foods with copper salts are amended accordingly.

The complete report of the investigations and conclusions of the Referee Board on this subject will be published by the Department of Agriculture.

R. E. DOOLITTLE,
F. L. DUNLAP,
A. S. MITCHELL,
Board of Food and Drug Inspection.

Approved:

James Wilson,
Secretary of Agriculture.

WASHINGTON, D. C., July 12, 1912.

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION 149.

USE OF COPPER SALTS IN THE GREENING OF FOODS.

Paragraph 4 of Food Inspection Decision 148 is hereby modified to read as follows:

The Secretary of Agriculture, therefore, will regard as adulterated, under the food and drugs act, foods greened with copper salts which, on and after January 1, 1913, are offered for entry into the United States or are manufactured or offered for sale in the District of Columbia or the Territories, or which, on and after May 1, 1913, are shipped in interstate commerce.

James Wilson, Secretary of Agriculture.

Washington, D. C., December 26, 1912. 71358°-No. 149-12



OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 150.

FROZEN CITRUS FRUIT.

It has come to the attention of the Board of Food and Drug Inspection that, as a result of a recent freeze, citrus fruit that has been badly damaged by frost is being placed on the market.

Citrus fruit is injured in flavor by freezing and soon becomes dry and unfit for food. The damage is evidenced at first by a more or less bitter flavor, followed by a marked decrease in sugar, and especially in acid content. Fruit which has been materially damaged by freezing is inferior and decomposed within the meaning of the Food and Drugs Act.

For the guidance of those engaged in shipping citrus fruit, it is announced that, pending further investigation, the following principles will be observed in enforcing the Food and Drugs Act:

Citrus fruit will be deemed adulterated within the meaning of the Food and Drugs Act if the contents of any package found in interstate commerce contain 15 per cent or more of citrus fruit which, on a transverse section through the center, shows a marked drying in 20 per cent or more of the exposed pulp.

CARL L. ALSBERG,
W. D. BIGELOW,
A. S. MITCHELL,
Board of Food and Drug Inspection.

Approved.

James Wilson, Secretary of Agriculture.

WASHINGTON, D. C., January 24, 1913.

75153°-No. 150-13

OFFICE OF THE SECRETARY.

FOOD INSPECTION DECISION NO. 151.

APPLICATION OF REGULATIONS.

Regulation 39 of the Rules and Regulations made in pursuance of the authority conferred by section 3 of the Food and Drugs Act, June 30, 1906 (34 Stat., 768), which reads as follows:

"Regulation 39. Application of Regulations.

"These regulations shall not apply to domestic meat and meat food products which are prepared, transported, or sold in interstate or foreign commerce under the meat-inspection law and the regulations of the Secretary of Agriculture made thereunder." is hereby revoked.

W. G. McAdoo,

Secretary of the Treasury.

D. F. Houston,

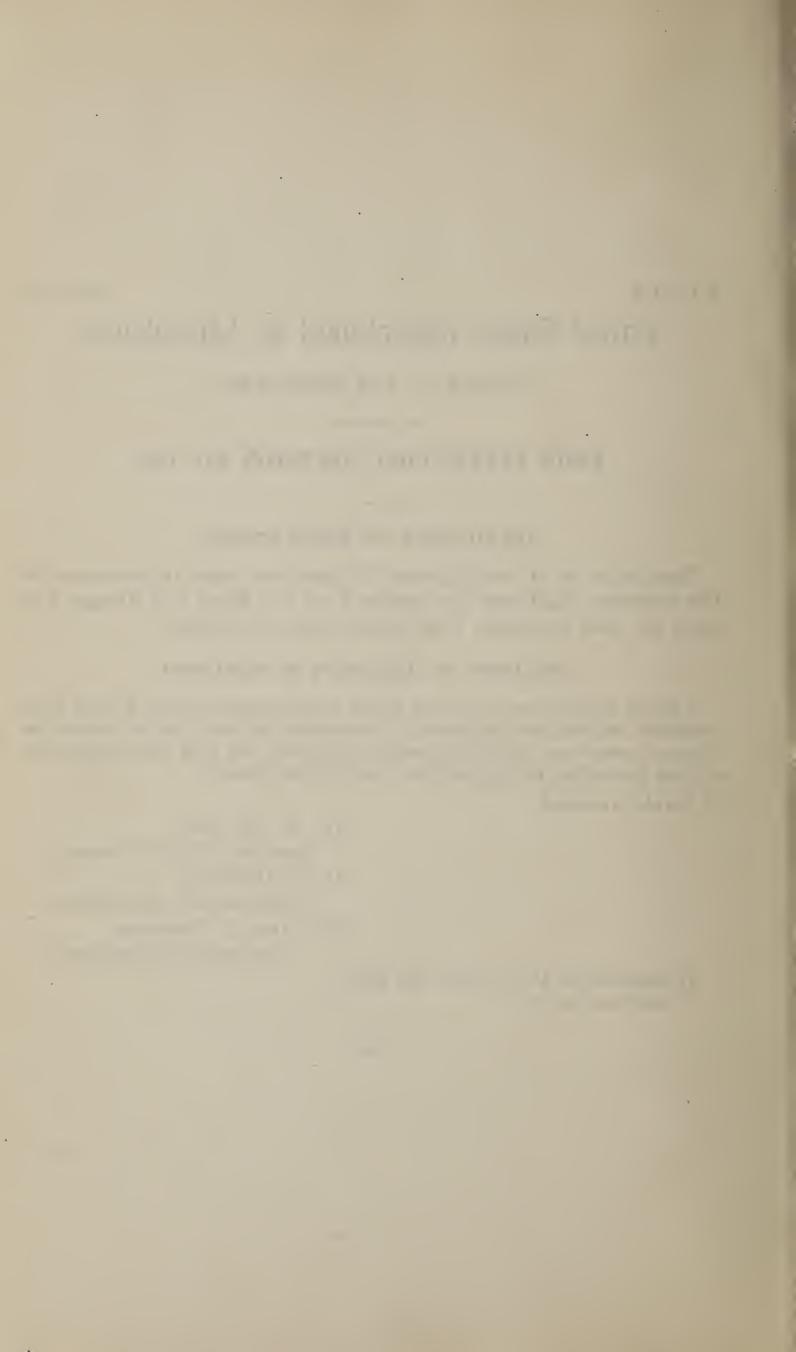
Secretary of Agriculture.

William C. Redfield,

Secretary of Commerce.

Washington, D. C., June 16, 1913.
308°—No. 151—13

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OFFICE OF THE SECRETARY.

BOARD OF FOOD AND DRUG INSPECTION

FOOD INSPECTION DECISION NO. 152.

BRANDY.

The Board of Food and Drug Inspection is of the opinion that brandy is the alcoholic distillate obtained solely from the fermented juice of fruit, distilled under such conditions that the characteristic bouquet, or volatile flavoring and aromatic principles, is retained in the distillate.

Grape brandy is the distillate obtained from grape wine under these conditions.

Apple, peach, and other fruit brandies are similarly prepared from the fermented juices of the respective fruits.

The board is of the further opinion that so-called brandy prepared from grain, potato, or other form of industrial alcohol, or from alcohol obtained from the by-products of wine manufacture, mixed with more or less true brandy or other flavoring material, is adulterated and misbranded unless labeled to indicate its true composition.

CARL L. ALSBERG, A. S. MITCHELL, H. M. Loomis,

Board of Food and Drug Inspection.

Approved:

B. T. GALLOWAY,

Acting Secretary of Agriculture.

Washington, D. C., August 29, 1913.

7863°——13

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